

EXHIBIT B.109

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

MARK I. SOKOLOW, ET AL.,
Plaintiffs,

vs.

Civil Action No.
1:04-cv-00397-GBD

THE PALESTINE LIBERATION
ORGANIZATION, ET AL.,
Defendants,

- - - - -x

DEPOSITION OF JOHN B. QUIGLEY

Columbus, Ohio

Thursday, October 10, 2013

REPORTED BY:

KAREN SUE GIBSON

REF. NO.: 10461

Page 2	Page 4
<p>1 2 3 4 5 6 October 10, 2013 7 8:30 a.m. 8 9 10 11 Deposition of JOHN B. QUIGLEY, held at 12 the Renaissance Columbus Downtown Hotel, 50 North 13 Third Street, Columbus, Ohio, pursuant to Notice 14 before KAREN SUE GIBSON, a Shorthand Reporter and 15 Notary Public of the State of Ohio. 16 17 18 19 20 21 22 23 24 25</p>	<p>1 -----INDEX----- 2 WITNESS EXAMINATION BY PAGE 3 JOHN B. QUIGLEY MS. MACHNES 6 4 MR. O'TOOLE 198 5 6 -----EXHIBITS----- 7 FOR IDENTIFICATION DESCRIPTION PAGE 8 Exhibit 1 Curriculum Vitae of 9 John Quigley 7 10 Exhibit 2 Publications of 11 John Quigley 59 12 Exhibit 3 "The Oslo Accords: 13 More Than Israel 14 Deserves" 63 15 Exhibit 4 USDC SDF 16 Hernandez vs. 17 United States 79 18 Exhibit 5 Expert Report of 19 John Quigley 81 20 Exhibit 6 201 State Defined, 21 Reinstatement (Third) 22 of Foreign Relations Law 128 23 - oOo - 24 25</p>
Page 3	Page 5
<p>1 APPEARANCES: 2 3 ARNOLD & PORTER LLP 4 Attorneys for Plaintiffs 5 BY: MS. TAL R. MACHNES, ESQ. 6 MS. LUCY S. McMILLAN, ESQ. 7 399 Park Avenue 8 New York, New York 10022-4690 9 (212) 715-1399 10 Tal.Machnes@aporter.com 11 Lucy.McMillan@aporter.com 12 13 14 15 MILLER & CHEVALIER CHARTERED 16 Attorneys for Defendants 17 BY: MR. TIMOTHY P. O'TOOLE, ESQ. 18 MS. DAWN E. MURPHY-JOHNSON, ESQ. 19 655 Fifteenth Street, N.W., Suite 900 20 Washington, D.C. 20005-5701 21 (202) 626-5800 22 totoole@milchev.com 23 dmurphyjohnson@milchev.com 24 25 - oOo -</p>	<p>1 STIPULATIONS 2 IT IS STIPULATED AND AGREED by 3 and between the attorneys for the 4 respective parties herein that the 5 filing, sealing, and certification of 6 the within deposition be waived. 7 IT IS FURTHER STIPULATED AND 8 AGREED that all objections, except as 9 to the form of the question, shall be 10 reserved to the time of the trial. 11 IT IS FURTHER STIPULATED AND 12 AGREED that the within deposition may 13 be sworn to and signed before any 14 officer authorized to administer an 15 oath, with the same force and effect 16 as if signed to before the court. 17 18 19 20 21 - oOo - 22 23 24 25</p>

Page 6

1 JOHN B. QUIGLEY, called as a witness,
2 having been first duly sworn by Karen Sue
3 Gibson, a Notary Public within and for the
4 State of Ohio, was examined and testified as
5 follows:

6 EXAMINATION BY

7 MS. MACHNES:

8 Q Good morning, Professor Quigley. My name
9 is Tal Machnes, I am here on behalf of plaintiffs,
10 and this is my colleague Lucy McMillan, also here on
11 behalf of plaintiffs, from Arnold & Porter. Have you
12 ever been deposed before?

13 A No.

14 Q No, okay. So I'm just going to give you
15 a little bit of background. I am going to ask you a
16 series of questions, and I want you to listen to my
17 question, answer the question as I ask it. If you
18 don't understand any of the questions that I ask you,
19 just let me know. If you need a break at any time
20 also let me know. We will be taking breaks every
21 hour, hour and a half, but if you need a break other
22 than that, just let me know. And other than that
23 we'll just get started.

24 I am first going to hand you a document
25 that is marked Plaintiff's Deposition Exhibit 1.

Page 8

1 A The place where it indicates my position
2 held, it says "Professor Emeritus (appointment
3 pending)." That appointment has now been approved so
4 you could delete the "(appointment pending)."

5 Q Congratulations on that. Okay. So
6 turning to your CV, you graduated from law school in
7 1966; is that right?

8 A Yes.

9 Q Okay. And do you hold any other graduate
10 degrees other than the law school degree?

11 A Yes. I hold a Master's degree from
12 Harvard University in international relations.

13 Q Okay. And you got that degree in 1966
14 also?

15 A Yes.

16 Q Okay. So it was a dual program?

17 A A dual degree, yes.

18 Q Okay. And what did you do after law
19 school?

20 A As indicated on the curriculum vitae, I
21 was a research fellow at Moscow State University for
22 one year, and then I was a research associate in law
23 at Harvard Law School for two years.

24 Q Okay. And what were you researching in
25 those positions? Let's start with the first one in

Page 7

1 (Exhibit 1 marked on the record.)

2 Q And if you could just take a minute to
3 review the document and let me know when you're
4 finished.

5 A Yes.

6 Q Okay. Do you recognize this document?

7 A Yes.

8 Q And what is it?

9 A It's a curriculum vitae of mine.

10 Q Okay. And this is a copy of the CV that
11 you submitted in connection with your expert report
12 in this matter?

13 A Yes.

14 Q Okay. When did you prepare this version
15 of your CV?

16 A Over the summer.

17 Q Okay. Is it complete and accurate?

18 A Yes.

19 Q And did you prepare it for purposes of
20 this expert report or is this the CV that you use
21 generally?

22 A It's a bit shorter than another one that
23 I have.

24 Q Okay. Is there anything that you want to
25 add or change in this version or?

Page 9

1 Moscow. What were you researching?

2 A It was international and comparative law.

3 Q Okay. And when you were a research
4 fellow at Harvard, what were you researching?

5 A It would be the same.

6 Q Okay. And did you produce any sort of
7 results of your research at the end of those?

8 A There were two books, one called "Basic
9 Laws on the Structure of the Soviet State" and
10 another one called "The Soviet Foreign Trade
11 Monopoly."

12 Q Okay. So the focus of both of those
13 fellowships was Soviet studies?

14 A Was the law of the Soviet Union, yes.

15 Q Okay. And any other focus or was it
16 limited to that?

17 A That was the sole focus.

18 Q Okay. So after your fellowships, what
19 did you do after that?

20 A I had -- I gained a position at Ohio
21 State University on the faculty.

22 Q And what position was that?

23 A Assistant professor.

24 Q And what were you teaching as an
25 assistant professor?

3 (Pages 6 to 9)

Page 10

1 A Initially my appointment was actually in
2 three different departments, the Department of Slavic
3 Languages and Literatures, the Department of
4 Political Science, and the College of Law. I was
5 teaching elementary Russian in the Department of
6 Slavic Languages and Literatures.

7 And Political Science I was teaching a
8 course about the Soviet Union and its legal system.

9 And in the College of Law I was teaching
10 a course on Soviet law, and rather soon I began
11 teaching as well criminal law, basic criminal law,
12 and basic international law.

13 Q Okay. Do you speak Russian?

14 A Yes.

15 Q Okay. And then at some point I see you
16 did a year on leave in Tanzania; is that right?

17 A Yes.

18 Q And had you started the -- had you
19 started your courses in criminal law and basic
20 international law at Ohio State before that --

21 A Yes.

22 Q -- leave? Okay. So what was your leave
23 in Tanzania? What was the purpose of your leave in
24 Tanzania?

25 A I had a temporary teaching position

Page 11

1 there.

2 Q And what were you teaching?

3 A Criminal law and international law.

4 Q Okay. And, again, was there any focus or
5 just general?

6 A I was teaching the basic first-year
7 course in criminal law and an elective course, survey
8 course, of international law.

9 Q In the criminal law course what -- what
10 law were you applying?

11 A I was teaching the criminal law of
12 Tanzania.

13 Q Okay. And how had you learned the
14 criminal law of Tanzania?

15 A The criminal law of Tanzania is taken
16 very -- almost in its entirety from British criminal
17 law, so it was something already familiar to me.

18 Q And when had you become familiar with the
19 British criminal law?

20 A Just from the common law of crimes that I
21 learned in law school.

22 Q Okay. So then you went back to Ohio
23 State after a year in Tanzania; is that right?

24 A Yes.

25 Q And when was that?

Page 12

1 A 1983.

2 Q 1983, okay. And what did -- what were
3 you teaching when you went back to Ohio State after
4 Tanzania?

5 A International law and criminal law.

6 Q Okay. So the two same courses? You
7 picked up and started the same courses?

8 A Yes, and comparative law. I was teaching
9 on the Soviet legal system as well.

10 Q Okay. That was -- it was those three
11 courses right when you got back from your leave?

12 A Yes.

13 Q Okay. And at some point did you begin
14 teaching any other courses or are those?

15 A Yes. I did expand a bit, and from time
16 to time I would teach seminars on different topics.
17 And I taught -- began teaching a seminar on the law
18 of Africa and on the Middle East Conflict.

19 Q Okay. Those were the two seminars that
20 you taught?

21 A Yes, yes.

22 Q And how often have you taught those
23 seminars?

24 A I rotate them. I couldn't tell you
25 offhand exactly how many times I've taught them but

Page 13

1 approximately every other year.

2 Q Okay. Do you -- do you rotate every
3 other year so one year you will do the law of Africa
4 and the next year you will do the Middle East?

5 A Yes. I also do international criminal
6 law so, let's see, the last couple of years I've
7 taught the Middle East Conflict course so I've taught
8 it maybe for the last two years at least and Africa
9 I've taught maybe twice over the last four years and
10 international criminal law maybe twice over the last
11 four years.

12 Q Okay. And what do you mean exactly by
13 Middle East Conflict as the title of your seminar?

14 A It focuses on the Arab-Israeli Conflict.

15 Q Okay. Is there any other part of that
16 course other than the Arab-Israeli Conflict?

17 A That's the entirety.

18 Q Okay. And when you began teaching that
19 seminar, had you had any other background in that
20 area?

21 I guess let me step back. So you started
22 teaching that seminar --

23 A Uh-huh.

24 Q -- when you got back from Tanzania in
25 1983?

4 (Pages 10 to 13)

Page 14

Page 16

1 A I don't remember when I started teaching
2 it exactly, but it was after 1983.

3 Q Okay. At some point after 1983. Was it
4 within five years, roughly?

5 A Probably, yes, yes.

6 Q And had you had any background in the
7 Middle East Conflict before you started teaching that
8 course?

9 A Well, it's my background in international
10 law. It's like a subset of international law.

11 Q Okay. So you had studied that conflict
12 specifically in your capacity as a professor or
13 student of international law?

14 A That's right.

15 Q And how had you studied it?

16 A By reading and studying the relevant
17 treaties and documents.

18 Q All right. Had you -- had you written
19 anything on it at that point?

20 A I think the first major thing I wrote
21 would have been a book that was published around
22 1989.

23 Q What was the book?

24 A The title is "The Challenge" --
25 "Palestine and Israel: A Challenge to Justice."

1 states when obligations are violated.

2 Q Okay. And what do you mean by states?

3 A The states in the sense of nation states,
4 states of the world.

5 Q And I am sure we are going to get much
6 more into this but what is your -- what's your
7 definition of a nation state or a state of the world
8 as you said?

9 A Well, it's an entity that's accepted in
10 the international community, accepted by other states
11 as having that status.

12 Q Okay, okay. So you -- before you began
13 teaching the Middle East Conflict seminar, you got
14 acquainted through reading and studying all these
15 relevant documents we went through. Do you have any
16 other experience subsequent to that other than the
17 teaching and the -- and what you did to prepare for
18 teaching the course? Do you have any other
19 experience with the Middle East Conflict?

20 A Any other experience? I mean, that's the
21 way that I, you know, developed expertise on the
22 subject was by teaching.

23 Q So just more of reading and studying the
24 relevant documents.

25 A Yes, yes.

Page 15

Page 17

1 Q Okay, okay. And you said that your
2 experience was from reading and studying relevant
3 treaties and the like. What were the specific -- if
4 you recall, the specific treaties and reading that
5 you did to become acquainted with the conflict before
6 you started teaching that course?

7 A Well, it would have been the
8 international documentation relevant to the conflict
9 going back to the time of the First World War, the
10 Balfour Declaration of Britain, the mandate of the
11 League of Nations over Palestine, the activity at the
12 United Nations when the United Nations came into
13 existence.

14 Q Any others that you remember?

15 A Those would be the major ones.

16 Q Okay. And what do you mean -- what do
17 you mean specifically -- this is going back all the
18 way to the beginning. What do you mean exactly by
19 the field of international law? What does that
20 encompass when you use that term?

21 A Well, my focus is what we call public
22 international law, the law between states --

23 Q Okay.

24 A -- customary international law, the law
25 of treaties, obligations among states, remedies for

1 Q Okay. Have you ever visited Israel?

2 A Yes.

3 Q Okay. How many times have you visited?

4 A Half a dozen, approximately.

5 Q Okay. When did you visit? When were
6 those?

7 A 1977.

8 Q Testing your memory here, I know.

9 A Right. Several times during the 1980s, I
10 don't remember the exact years, and several times
11 during the 1990s as well, and several times during
12 the first decade of this century.

13 Q Okay. And do you speak Hebrew?

14 A No.

15 Q Okay. And what was the purpose of those
16 visits? I mean, we can take them one by one. In
17 1977, why did you go?

18 A That was a visit with a group of lawyers
19 that were there to just get a general idea of the
20 situation from the standpoint of legal issues.

21 Q Okay. And was it a conference?

22 A Not a conference, it was just a visit, a
23 group of lawyers.

24 Q And was the group of lawyers all from the
25 United States, or were they from around the world?

5 (Pages 14 to 17)

Page 18

Page 20

1 A From the United States.

2 Q Okay. And you just went together and
3 what did you do while you were there?

4 A We talked with -- with lawyers in, you
5 know, the area that had relevant experience on the
6 issues that are involved in the conflict.

7 Q Okay. So you spoke to Israeli lawyers?

8 A Yes.

9 Q And any other lawyers from the area?

10 A And Palestinian lawyers.

11 Q And what did you gain from that visit?

12 A Well, I gained a better understanding of
13 the entire situation, supplemented, you might say,
14 what I was learning in an academic sense.

15 Q And so what was that understanding that
16 had become supplemented?

17 A Well, I just had a better understanding
18 of how the international system and its activities
19 were playing out in the real world.

20 Q And how were they playing out in the real
21 world?

22 A Well, there was still a conflict going
23 on. The international community hadn't been able to
24 resolve it.

25 Q I am just wondering what you learned

1 A Yes.

2 Q And what did you gain from that visit?

3 A We were simply, you know, talking with
4 the teachers in these universities to get a general
5 idea of the situation.

6 Q And I guess let's start with the
7 Jerusalem university visits. What was the
8 perspective of the academics that you met with at the
9 Jerusalem universities?

10 A What was their perspective?

11 Q Yes. You said you spoke with them so
12 what -- I guess what did you speak about?

13 A Right. We spoke about the conflict and
14 ways of resolving the conflict.

15 Q Okay. And do you remember anything more
16 specific about your conversations with them, what
17 they had to say about the conflict and ways of
18 resolving the conflict?

19 A Well, in general they were all looking
20 for ways of coming to some accommodation, and they
21 were focusing on the difficulties, the points in
22 controversy.

23 Q And what difficulties, I guess, were
24 brought up?

25 A Resolving the basic issues about

Page 19

Page 21

1 while you were there, what -- what you had gained
2 specifically in terms of knowledge or experience by
3 meeting with the local lawyers while you were there.

4 A Well, I mean, we focused on the law
5 relating to belligerent occupation in the -- as
6 relevant to the West Bank and Gaza Strip and that led
7 me into reading decisions of the Supreme Court of
8 Israel on the subject.

9 Q Okay. Anything else?

10 A No.

11 Q Okay. Then you said you visited Israel
12 several times in the 1980s. What was the purpose of
13 those visits?

14 A There was one visit with a group of
15 academics. We were visiting universities in
16 Jerusalem and in the -- in the Palestinian
17 territories.

18 Q So you visited universities in Jerusalem
19 and visited universities in Palestine?

20 A Yes.

21 Q Were those two separate visits or that
22 was in --

23 A A single visit, yeah.

24 Q -- a single visit? And that was with a
25 group of academics?

1 territory, the issues that are still the main points
2 of controversy in the conflict.

3 Q Why do you -- what do you mean when you
4 say the conflict about the territories?

5 A What -- who is going to have control of
6 what territory.

7 Q So you mean the control of the West Bank
8 and the state of Israel --

9 A Yes, yes.

10 Q -- and the Gaza Strip. So that was -- do
11 you remember anything else about your meeting with
12 the academics at Jerusalem University?

13 A No.

14 Q Okay. And then you said in the same
15 visit you met with academics also in the Palestinian
16 territories?

17 A Yes.

18 Q And what do you remember, if anything,
19 about those meetings?

20 A Well, basically the same issues but also
21 issues of the law of belligerent occupation and their
22 concerns that -- that those laws were not being
23 respected on the Israeli side.

24 Q Okay. What university -- I'm sorry if I
25 missed it before but what university or universities

6 (Pages 18 to 21)

Page 22

1 did you visit when you were in the Palestinian
2 territories?

3 A The University of Bir Zeit.

4 Q Okay. And how do you spell that just for
5 the court reporter?

6 A Two words, B-I-R Z-E-I-T.

7 Q Okay. And do you remember anything else
8 about your meetings with those academics, the
9 Palestinian academics?

10 A No.

11 Q Okay. And so that was your visit in the
12 '80s, if you recall.

13 A Uh-huh.

14 Q You said you thought you visited several
15 times. Do you remember any other specific visits in
16 the '80s?

17 A There was one other visit later in the
18 '80s but I -- my recollection is less precise as to
19 exactly what I did there.

20 Q Okay. But was that after the one that we
21 just talked about?

22 A Yes, yes.

23 Q Okay. Was it for business, do you think?

24 A Well, again, I was talking with people
25 about the conflict.

Page 24

1 international issues around the world, I think
2 development issues of various kinds.

3 Q Okay. So obviously they are involved in
4 consulting related to conflict in the Middle East.
5 Do you know if they are -- do you know any other
6 specific development projects that they are involved
7 in?

8 A In other parts of the world?

9 Q Yeah.

10 A I looked at it at one time, but I don't
11 remember specific countries. But they -- I think
12 they were involved in like administering British aide
13 in developing countries of the world.

14 Q Okay. Do they have any particular focus
15 on the conflict in the Middle East or it's one of
16 their large group of?

17 A Yes, they do. They were asked by the
18 British government to set up a -- a legal office once
19 the negotiations were in prospect between the
20 Israelis and the Palestinians.

21 Q Okay. Where did they set up a legal
22 office?

23 A In the town of Ramallah.

24 Q Okay. And when did they set up that
25 legal office?

Page 23

1 Q Okay. And that's all you remember? I
2 know it's going back a long time.

3 A Yes. I'm a little bit vague on that one.

4 Q Okay. So let's go to the '90s. You said
5 you visited Israel several times in the '90s. Do you
6 remember the first visit that you made to Israel in
7 the 1990s?

8 A It might have been one in the early '90s,
9 but I can't remember for sure.

10 Q Okay. Was there one later in the '90s
11 that you do remember?

12 A Yes, yes.

13 Q What was that?

14 A 1999.

15 Q In 1999, you went to Israel again?

16 A Yes.

17 Q What was the purpose of that visit?

18 A I had been asked to go there by a
19 consulting firm in London called the Adam Smith --
20 Adam Smith International.

21 Q Okay. What is Adam Smith International?

22 A It's a consulting firm located in London,
23 England.

24 Q And what do they do primarily?

25 A They do consulting on various

Page 25

1 A I think 1999.

2 Q Okay. And that's when you went to
3 Israel?

4 A Yes.

5 Q And were you hosted by the Adam Smith
6 International?

7 A Yes.

8 Q Okay. So were you working out of their
9 office?

10 A I mean, they -- they had set up an office
11 there, and I was in contact with it, yes.

12 Q Okay. Well, what did you do with them
13 when you were there in 1999?

14 A I was asked to consult with the lawyers
15 that they were organizing that were in the office in
16 Ramallah. I was asked to consult with them on -- on
17 legal issues that might arise.

18 Q And were the lawyers in their office in
19 Ramallah, were they British lawyers?

20 A They were recruited, I think, generally
21 from anywhere.

22 Q Anywhere in the world.

23 A Anywhere in the world. I think most of
24 them had a connection to the United States.

25 Q Okay. Were there any Palestinian lawyers

7 (Pages 22 to 25)

Page 26

1 there?

2 A I think some of the -- those from the
3 United States were of Palestinian background.

4 Q Okay. But not that you can recall any
5 Palestinian lawyers without a connection to the
6 United States?

7 A I don't think there were.

8 Q Okay. And do you recall if there were
9 any Israeli lawyers set up in that office in
10 Ramallah?

11 A Israeli lawyers? I don't think there
12 were.

13 Q Okay. And I know they had just set up
14 when you were there in '99 but what do you recall was
15 the product of those meetings that you had?

16 A We kind of set up a procedure for
17 possible future contact, that I might be consulted on
18 issues.

19 Q Okay. I just want to step back. We will
20 go back to that but what were -- I guess what were
21 the -- during your meetings in 1999 with the lawyers
22 at the Adam Smith International office in Ramallah,
23 what were the legal issues that you were discussing
24 with the lawyers there?

25 MR O'TOOLE: I am going to

Page 28

1 A The major issues that were on the table
2 between the Israelis and Palestinians.

3 Q So before you mentioned, for example, in
4 the -- in your previous visits the law of belligerent
5 occupation. Were you discussing that?

6 A Yes.

7 Q Okay. And ways to resolve the conflict,
8 were you discussing that?

9 A I'm sorry?

10 Q Ways to resolve the conflict.

11 A Yes.

12 Q Anything else like that that you recall
13 discussing?

14 A No. Those were the keys.

15 Q Okay. And then you said that at the end
16 of that visit you set up a procedure for possible
17 future consult?

18 A Yes.

19 Q And have you worked with that office
20 again after your visit in 1999?

21 A Yes.

22 Q Okay. And when -- when have you worked
23 with them? How many times?

24 A I mean, on a number of occasions. I
25 don't remember how many. I was asked for opinions on

Page 27

1 object at this point. I am assuming
2 you were consulted in your capacity as
3 a lawyer, and to the extent this asks
4 for communications in which he was
5 asked for legal advice, I think there
6 may be a privilege issue here. I will
7 let you ask questions about it, but I
8 just want to flag it at this point.

9 Q Did you have a client when you were --
10 when you were at that office when you went to visit
11 in '99 and were meeting with lawyers at the Adam
12 Smith International office, did you have any client
13 that you were representing during those visits?

14 A Not in the sense of individuals who had
15 litigation.

16 Q Okay, okay. So, again, I'll ask the
17 question I asked before. What were the legal issues
18 that you were discussing with the other attorneys at
19 the Adam -- at the Adam Smith office?

20 A Well, I was discussing with other lawyers
21 so I was, you know, consulting with them; and they
22 had a client so, you know, I was really consulting in
23 a -- in a legal capacity.

24 Q Okay. And what were -- what issues were
25 you discussing?

Page 29

1 various issues.

2 Q And have you -- have those communications
3 been over the internet, or have you gone back and
4 visited that office again?

5 A They were remote. I haven't gone back
6 for that purpose.

7 Q Okay. And what sorts of opinions were
8 you giving them?

9 A Well, about issues that would rise in the
10 course of their work that they wanted more
11 elaborations on.

12 Q Okay. And it was general policy issues,
13 or was it related to specific cases? Do you have
14 any?

15 A The general policies involved in the
16 major issues that were on the table.

17 Q Okay. Do you know what issues they were
18 coming up against in terms of the general policy
19 issues?

20 A I mean, they were the ones specified in
21 the -- in the 1993 Declaration of Principles between
22 the parties.

23 Q Okay. And what were those?

24 A Borders, Jerusalem, sovereignty,
25 refugees.

8 (Pages 26 to 29)

Page 30

1 Q Okay. So were they -- were they
2 representing individual clients in Palestine, the
3 Adam Smith International?
4 A No.
5 Q They weren't. So they were dealing
6 mostly with these policy issues just like the ones
7 you just mentioned in the 1993 interim agreement?
8 A Yes.
9 Q Okay.
10 A 1993 Declaration of Principles.
11 Q 1993, right. Okay. So that was -- that
12 was your visit in 1999. Then you said you also
13 visited Israel again several times in the early part
14 of this --
15 A Uh-huh.
16 Q -- century. How many times have you
17 visited in the 2000s?
18 A Two or three times, I would say, during
19 the first decade of the 21st Century.
20 Q Okay. Two or three times? What was the
21 first visit that you remember?
22 A I was asked to give a lecture at Bir Zeit
23 University. That was one visit. I was asked to give
24 a lecture at the University in Hebron. I think that
25 was my most recent visit.

Page 31

1 Q Okay. And those are the two you
2 remember?
3 A Yes. Then there was also a conference
4 on -- with some lawyers about the issue of
5 Palestinian nationality as it would appear in the
6 agreements expected to come with Israel.
7 Q Do you think that was in between the two?
8 A Yes, actually.
9 Q Okay.
10 A These would be roughly 2009 to 2012.
11 Q Okay, okay. So I want to take those one
12 by one. What was the lecture you gave at Bri Zeit
13 University?
14 A It was on international law issues in
15 the -- in the Arab-Israeli Conflict.
16 Q And how long was that speech?
17 A An hour.
18 Q And who attended?
19 A Students and faculty of that university
20 and I think it was open to the public.
21 Q Okay. Do you know if anyone came -- if
22 anyone actually came from outside of the university?
23 A I think so, yes.
24 Q Okay. And what issues specifically were
25 you -- what international law issues specifically

Page 32

1 were you lecturing on?
2 A Yeah, that I don't really remember.
3 Yeah, I think I went into the history of the Balfour
4 Declaration and the mandate period. It was a general
5 lecture.
6 Q Okay. And then did you go out to the
7 present, or was it more of a historical evolution of
8 the conflict?
9 A It was historical but I did go up to the
10 present to, you know, the issues that are outstanding
11 at the moment.
12 Q Okay. And by issues outstanding do you
13 mean the issues -- what do you mean by the issues?
14 A Yeah. I would have included the issue of
15 statehood of Palestine and the activity at the United
16 Nations.
17 Q And what activity at the United Nations
18 had been relevant to that lecture and was relevant at
19 that time?
20 A Well, there was talk about the Palestine
21 government making an approach for membership in the
22 United Nations. There was also an effort to converge
23 jurisdiction on the International Criminal Court for
24 matters relating to the military activity in Gaza
25 that occurred at that time.

Page 33

1 Q Okay. So do you remember -- so this
2 was -- this was -- you think was in around 2009, this
3 one, this lecture?
4 A Maybe 2009, 2010, I'm not sure.
5 Q Okay. Do you remember what approaches
6 the Palestinian government had made at that point for
7 membership before the UN?
8 A At that point it was being -- there was
9 the thought they might make an approach for
10 membership at the UN.
11 Q Okay. And the UN admits for full
12 membership only internationally-recognized states; is
13 that right?
14 A They only admit states.
15 Q For full membership.
16 A Yes.
17 Q So you said there was a thought that
18 Palestine might be making an approach for
19 membership --
20 A Yes.
21 Q -- as of then and did they?
22 A They did in 2011, yes.
23 Q Okay, 2011. And what was the result of
24 that approach?
25 A It was not approved by the Security

9 (Pages 30 to 33)

Page 34

1 Council.

2 Q Okay. And did you mention that 2011
3 approach in your report? I know we haven't
4 introduced it yet, the expert report you provided in
5 this case. Did you?

6 A I don't remember if I mentioned that or
7 not.

8 Q Okay. We can go back to that once we
9 have your report in front of you. Okay. So then you
10 think that was your first lecture, 2009, 2010. And
11 then your next visit you said there was a conference
12 on Palestinian nationalities; is that right?

13 A Uh-huh.

14 Q And do you remember around what time that
15 was, what year?

16 A 2011 or '12.

17 Q Okay. And who was the conference -- who
18 attended the conference?

19 A There were lawyers from Israel and from
20 the West Bank.

21 Q Lawyers from Israel and the West Bank and
22 the U.S.?

23 A And the U.S., uh-huh, uh-huh.

24 Q How many people and -- or how many
25 lawyers attended the conference about?

Page 36

1 be in some other connection to Palestine that was
2 something short of citizenship or they could be
3 considered to have no connection at all.

4 Q Okay. And what is your view on that?

5 A I didn't have a very defined view on it.
6 I regarded it as a complicated issue.

7 Q And like most issues would you say that's
8 among the complicated issues?

9 A Yes.

10 Q So were there multiple speakers at the
11 conference who took different views, or was there one
12 speaker? I know you don't remember who the speaker
13 was.

14 A I think there were differing views, some
15 who thought all should be considered to be full
16 citizens and some who thought that was -- was not the
17 right approach.

18 Q Okay. Was there anyone who took the view
19 that Palestinians should hold Israeli citizenship?

20 A Well, I mean, certainly the Palestinians
21 who already have Israeli citizenship that live in
22 Israel there was -- there was a point of view that
23 they should maintain their citizenship because there
24 was something of an effort in Israel to suggest that
25 those people should depart and should not be citizens

Page 35

1 A It was open to the public, but I don't
2 know, perhaps 30 or 40.

3 Q And it was open to the public -- to
4 lawyers of the public or even nonlawyers?

5 A Well, it was open to everyone.

6 Q Okay. But as you recall, it was only
7 Palestinian, Israeli, and U.S. lawyers that attended?

8 A Yes, primarily.

9 Q Okay. And the issue was on Palestinian
10 nationality; is that right?

11 A Yes.

12 Q What exactly -- who spoke at the
13 conference?

14 A Well, who spoke? I don't remember who
15 spoke. The issue was what would become -- if there
16 were a successful negotiation with Israel, what would
17 be the status of Palestinians, in particular those
18 outside the territory, those who are in other
19 countries, other -- what their status would be in
20 relation to the -- to Palestine.

21 Q Okay. What were the -- I guess what were
22 the various options of statuses that could have
23 applied to Palestinians outside of the --

24 A Well, they could be considered to be
25 citizens of Palestine or they could be considered to

Page 37

1 of Israel any longer.

2 Q And that would be if there was a
3 negotiated agreement, then the Palestinians who had
4 obtained citizenship -- Israeli citizenship should no
5 longer have Israeli citizenship?

6 A There was that point of view being
7 expressed in some political circles in Israel and
8 these lawyers were responding to that.

9 Q And do you remember what the response
10 was?

11 A Well, that they should maintain their
12 citizenship and their residence.

13 Q Okay. Do you remember anything else
14 about that conference?

15 A No.

16 Q How many -- sorry. I should have asked
17 this earlier, was it one day, or did it go on for
18 multiple days?

19 A It might have been a day and a half.

20 Q A day and a half. So then you went back.
21 Your most recent visit you said you were giving a
22 lecture at Hebron University?

23 A Yes.

24 Q And that was in 2012?

25 A I think so, yes.

10 (Pages 34 to 37)

Page 38

1 Q Okay. Around 2012.
 2 A Uh-huh.
 3 Q And what was that lecture on?
 4 A Well, it focused on a number of issues
 5 but largely on the Palestine approach to the
 6 International Criminal Court.
 7 Q Okay. And had you -- I know you said in
 8 your first lecture you also discussed the possibility
 9 of conferring jurisdiction on the International
 10 Criminal Court.
 11 A Yes.
 12 Q So then this lecture, that topic was the
 13 sole focus?
 14 A It was the primary focus, I would say.
 15 Q Okay. And what -- what was the content
 16 of your lecture?
 17 A Well, the issue for the International
 18 Criminal Court was whether to accept the declaration
 19 that had been sent by the Palestine government to
 20 confer jurisdiction on the court on the basis of the
 21 court's statute which allows for a state that is not
 22 a part to confer jurisdiction on the court. So I
 23 was -- was talking about that declaration that at
 24 that point had been filed.
 25 Q Okay. When was that declaration filed?

Page 39

1 A The beginning of 2009.
 2 Q Okay. And had -- what was the ICC's
 3 response to that declaration?
 4 A It -- the prosecutor decided that he
 5 couldn't decide on the validity of the declaration
 6 because it turned on whether Palestine was a state,
 7 and he thought that that issue should be decided by
 8 the General Assembly of the United Nations.
 9 Q Okay. And the prosecutor of the ICC, is
 10 that the head of the ICC or? Just asking.
 11 A He is an official under the statute that
 12 sets up the ICC who -- who takes cases to the court
 13 and formulates charges and prosecutes.
 14 Q I see. So his opinion or his decision is
 15 the official decision of the court?
 16 A No. The court itself -- the issue never
 17 got to the court itself.
 18 Q Okay.
 19 A Not to the judges of the court. So the
 20 prosecutor was saying that he thought that the
 21 determination about Palestine status was not one that
 22 he as a prosecutor should be required to make.
 23 Q Okay. I see. Had there been any other
 24 attempts by the Palestinian government to confer
 25 jurisdiction on the ICC?

Page 40

1 A That was the first.
 2 Q The first. Have there been subsequent
 3 attempts?
 4 A Not any subsequent attempt. I mean, that
 5 attempt is still -- you know, is not completely dead.
 6 Q Uh-huh, because it never reached the
 7 court.
 8 A That's right.
 9 Q Okay. But -- so that's outstanding and
 10 there haven't been any subsequent attempts to renew
 11 that or?
 12 A Yeah. There have been no new -- yes, no
 13 new developments or approaches to the court.
 14 Q Okay. In that lecture about ICC
 15 jurisdiction, what was the opinion that you -- that
 16 you gave in that lecture?
 17 A Well, I said that Palestine is a state
 18 and, therefore, that the International Criminal Court
 19 should have jurisdiction.
 20 Q Okay. So in your opinion the prosecutor
 21 should have put the issue before the court.
 22 A Yes.
 23 Q Okay. And so the prosecutor should have
 24 put the issue before the court, and in your opinion
 25 the court should have allowed the jurisdiction.

Page 41

1 A Yes.
 2 Q The ICC. Do you have any idea why the
 3 Palestinian government has not made any -- any new
 4 attempts or pushed this -- pushed this issue further
 5 before the ICC?
 6 A Well, it's filed its declaration. As a
 7 formal matter, there's really nothing that requires
 8 it to do anything more. I mean, they've posed the
 9 matter to the court, and the prosecutor has authority
 10 under the statute of the court to -- to investigate
 11 on the basis of any information and on the basis of
 12 the prosecutor's view of jurisdiction. So the
 13 prosecutor has not proceeded to take any more steps
 14 on the matter.
 15 Q Okay. You said "nothing requires it,"
 16 and by "it" did you mean Palestine to --
 17 A Yes, yes.
 18 Q Okay. Are they allowed to take --
 19 A They are allowed, yeah. Yeah, they could
 20 at any time send any kind of communication they want
 21 to.
 22 Q Okay. And they haven't made any
 23 further -- they haven't taken any further steps with
 24 respect to that declaration or any other type of?
 25 A I think that's correct, yes.

11 (Pages 38 to 41)

Page 42

1 Q Okay. I think that -- does that exhaust
2 in your recollection your visits to Israel?

3 A Yes, it does.

4 Q Okay. Have you visited the West Bank
5 and/or Gaza separately from your visits to Israel
6 that we just discussed?

7 A Well, the visits have included --

8 Q Right.

9 A -- the other territories.

10 Q But have you ever been to the West Bank
11 and not Israel?

12 A No. I think I have been in Israel each
13 time.

14 Q And the same is true of Gaza?

15 A Yes.

16 Q So we've covered all these from the '70s
17 through the -- we've covered all your visits to that
18 area of the Middle East.

19 A Uh-huh.

20 Q And have your -- other than developing
21 more knowledge in this area have your views on any
22 issues transformed in any specific ways through those
23 visits and through that experience?

24 A Are you asking about a particular issue
25 or?

Page 44

1 A Well, I've probably gained more knowledge
2 about how these issues play out; but, you know, my
3 basic views on them have not fundamentally changed.

4 Q Okay. And is there a difference between
5 I guess the way these things play out and sort of
6 the -- your experience on the ground in the areas as
7 opposed to I guess the way you've -- you've gained
8 knowledge through reading and your studies here in
9 the United States?

10 A Well, I mean, when you talk to people who
11 are living through the conflict, it gives you a sense
12 of the urgency and the need for some resolution. I
13 would say that's the major thing that I've gained by
14 speaking with people on both sides of the conflict.

15 Q Okay, okay. So to recap, and we have
16 been talking about your professional career, since
17 graduating law school your career has consisted
18 primarily of the fellowships and the academic
19 professor experiences you've held after law school?

20 A Yes.

21 Q And currently you are still a professor
22 at Ohio State?

23 A Yes.

24 Q And now a professor emeritus?

25 A Yes.

Page 43

1 Q I want -- well, okay. So, for example,
2 we talked about the law of belligerent occupation.
3 Has your view on that changed at all through your
4 initial visit to Israel and to the present?

5 A I wouldn't say my basic view has changed,
6 that is, my view was that Israel holds the West Bank
7 in a status called belligerent occupation but that
8 has been the view of the Supreme Court of Israel for
9 many years so my view hasn't changed.

10 Q Okay. And what do you mean by
11 belligerent occupation?

12 A It's the status where an army is in
13 occupation of -- of territory that is outside the
14 sovereignty of the state that that army represents.

15 Q And the territory we are talking about
16 here is the West Bank and Gaza?

17 A Yes.

18 Q And any additional territory?

19 A Well, the Golan Heights as well would be
20 under belligerent occupation by Israel.

21 Q Okay. So that was what I meant by have
22 your views on these issues developed or changed at
23 all. Can you think of any other specific issues
24 related to the conflict in the Middle East that have
25 changed or developed over the years?

Page 45

1 Q Do you have any other experience with
2 the -- related to the Middle East Conflict other than
3 what we've already discussed?

4 A I think that's the totality of it.

5 Q Okay. Are you a U.S. qualified lawyer?

6 A Yes.

7 Q Okay. So you are admitted to -- I think
8 this is on your CV. You are admitted to several
9 bars. Massachusetts is one; is that right?

10 A Massachusetts isn't active.

11 Q It isn't active, okay. And is Ohio
12 active?

13 A Yes.

14 Q And you have been a member of the Ohio
15 Bar for -- since 1973?

16 A Yes.

17 Q Okay. And then the United States
18 District Court for the Southern District of Ohio, is
19 that membership active?

20 A Yes.

21 Q Okay. That's been active since 1976?

22 A Yes.

23 Q Okay. And what about the Sixth Circuit?

24 A Yes. I was admitted to practice there as
25 well.

12 (Pages 42 to 45)

Page 46

1 Q In 1986?
 2 A Yes.
 3 Q Okay. And that's active now?
 4 A Yes.
 5 Q Okay. And the United States Supreme
 6 Court you are active?
 7 A Yes, yes.
 8 Q Okay. And then finally the Fourth
 9 Circuit you were admitted in 1997?
 10 A Yes.
 11 Q And that's an active membership also?
 12 A Yes.
 13 Q Okay.
 14 A I mean, I haven't done any cases in the
 15 Fourth Circuit recently, but I think it's still
 16 valid.
 17 Q You think it's still, okay. So what type
 18 of law do you primarily practice? U.S. law?
 19 A Well, I mean, I don't practice. I don't
 20 have a law practice as such, but I am admitted to
 21 practice. And I have -- let's see, I've done -- I
 22 have been involved in cases relating to international
 23 law issues.
 24 Q Okay. And is this primarily litigation?
 25 A Yes.

Page 47

1 Q Involved in any cases other than
 2 litigation cases?
 3 A I don't know what you mean by cases other
 4 than litigation.
 5 Q Well, corporate cases, there's other
 6 types of -- but your experience is -- your experience
 7 as a lawyer is in the litigation context.
 8 A Yes.
 9 Q Okay. And so you said you -- the cases
 10 that you have been involved in in the U.S., they've
 11 related to international law issues?
 12 A Yes.
 13 Q Okay. And is that true of all of the
 14 cases, the U.S. cases, that you have been involved
 15 in?
 16 A I was involved in some criminal
 17 representation on minor criminal charges back 20, 30
 18 years ago.
 19 Q Okay.
 20 A More recently it's been international law
 21 issues where I have filed amicus briefs rather
 22 than -- rather than having been the principal lawyer
 23 in litigation.
 24 Q Okay. I guess, first, I want to go back
 25 to the criminal representations.

Page 48

1 A Uh-huh.
 2 Q How many -- if you remember, how many of
 3 those criminal representations were you involved in?
 4 A Just a handful, I worked in an office in
 5 Massachusetts, a legal aid office, and I did maybe
 6 just one or two criminal cases there.
 7 Q I'm smiling because I'm from
 8 Massachusetts.
 9 A I see. It was in East Cambridge, yes.
 10 Q So one or two criminal representations --
 11 A Yes, yes.
 12 Q -- in the legal aid office?
 13 A Uh-huh.
 14 Q And were you the lead attorney on any
 15 other cases other than those criminal
 16 representations?
 17 A Well, I don't think I was lead attorney
 18 then. I was very junior. And I -- I did do some
 19 criminal representation in Ohio then on -- on, again,
 20 fairly minor criminal charges in the 1970s.
 21 Q Okay. And then since then you have
 22 mostly -- your litigation experiences have been
 23 limited to amicus briefing?
 24 A Yes.
 25 Q Okay.

Page 49

1 A Yeah, yeah. It's primarily related to
 2 issues rising under the Vienna Convention on Consular
 3 Relations.
 4 Q Okay. What is that issue?
 5 A The issue is the situation that arises
 6 when a foreigner is arrested in the United States and
 7 the right of that person to be in touch with a
 8 consulate of their home country and the consequences
 9 when the person is not informed of that right at the
 10 time of arrest and whether there is a judicial remedy
 11 for that failure.
 12 Q Okay. Have you ever represented any of
 13 those clients in a personal capacity?
 14 A No.
 15 Q Do you know over the course of your
 16 career including the criminal representations and
 17 these -- these amicus briefings how many cases you've
 18 been involved in before U.S. courts total through the
 19 course of your career?
 20 A I never thought about it in that way but
 21 probably in the -- well, there's some times as a
 22 professor I am asked to sign on an amicus brief that
 23 someone else has written so there have been, you
 24 know, maybe a dozen or 20 of those on topics that I
 25 don't remember because I didn't write the brief

13 (Pages 46 to 49)

Page 50

1 myself.

2 Q Okay.

3 A But on Vienna Convention probably half a
4 dozen. I've written briefs in the U.S. Supreme Court
5 on behalf of the European Union on that issue on two
6 or three occasions.

7 Q Okay. So with the criminal
8 representations probably around 15 total cases?

9 A You want to include the amicus and the --

10 Q Yes.

11 A It may be more like 25 or 30.

12 Q Okay. Well, I guess since the 1970s --
13 and I know you said you probably weren't lead
14 counsel, you were junior back then, but since the
15 1970s, have you appeared as lead counsel on any case
16 in a U.S. court?

17 A No.

18 Q And, now, I want to -- so that was the
19 U.S. litigation you have been involved in. You've
20 also been involved in, I see from your CV, in a
21 number of international litigation cases.

22 MR O'TOOLE: Are we moving
23 on to a different topic? Could we
24 somehow take a break?

25 MS. MACHNES: Oh, yeah,

Page 52

1 Q 2004, okay. What was the name of that
2 case?

3 A Caspian Shipping Company.

4 Q And what body was that case before?

5 A It's an arbitration body that deals with
6 commercial litigation called London -- I think it's
7 London Maritime Arbitration. And then I was --

8 Q Before you start -- before you move on
9 what was the outcome of that case?

10 A I don't actually know.

11 Q You provided -- did you provide an expert
12 opinion in that case?

13 A Yes, yes.

14 Q And were you -- were you deposed -- you
15 weren't deposed because you said you had never been
16 deposed before. Did you testify in this case?

17 A Yes.

18 Q Okay. Go on. I think you were starting
19 to mention another.

20 A Another in the International Court of
21 Justice, I participated with other lawyers in
22 representing the government of Bosnia in a suit
23 against Yugoslavia in the 1990s.

24 Q Okay, okay. Do you know, is this list on
25 your CV of international litigation a comprehensive

Page 51

1 sure. We can take a break.

2 (Recess taken.)

3 Q Back on the record. So, Professor
4 Quigley, what international litigation have you been
5 involved in?

6 A Well, I listed a number of things here.
7 I mean, one has been -- well, we've already talked
8 about U.S. courts but in -- you are asking about
9 outside the United States.

10 Q Yes, before international tribunal
11 courts.

12 A Yeah. Let's see, I don't think I listed
13 I was an expert witness in London in the Maritime
14 Arbitration Commission in a case between a shipping
15 company in Azerbaijan and a shipping company in Iran.
16 I was the expert witness for the Azerbaijan shipping
17 company, a dispute over costs for servicing vessels
18 in ports of Iran. That turned on the question of who
19 was responsible for debts following the breakup of
20 the Soviet Union so it was a case that involved
21 issues of sovereignty.

22 Q When was that?

23 A That was 2000 -- it was during a
24 presidential election because I had to vote absentee.
25 2006 -- no, no, 2004.

Page 53

1 list of the international cases that -- I guess the
2 cases before international tribunals or bodies that
3 you have been involved in?

4 A I noticed I hadn't included the London
5 arbitration I think because I -- well, I was not in a
6 capacity as a lawyer there. I was a witness. But I
7 think the list includes every one where I've -- where
8 I've made an argument or in two instances it's noted
9 I was a consultant where I didn't participate, you
10 know, as in the sense of actually making arguments to
11 a tribunal.

12 Q Okay, okay. So we have the International
13 Court of Justice, right?

14 A Uh-huh.

15 Q And then you also made an argument before
16 the Inter-American Commission on Human Rights; is
17 that right? A couple?

18 A Yes, yes.

19 Q Okay. The -- what about the fifth one
20 down, the brief and oral presentation, the Committee
21 on the Rights of the Child, is that an
22 international --

23 A Yes.

24 Q -- body?

25 A Yes.

14 (Pages 50 to 53)

Page 54

1 Q Okay. And then you've also argued before
2 the High Court of Justice in England? Oh, you were a
3 consultant.

4 A I was a consultant so I myself did not
5 argue.

6 Q Okay. So did any of the cases here or
7 the one -- the one that you remember not including,
8 did any of those cases apply U.S. law?

9 A I think they were all on international
10 law. They didn't involve U.S.

11 Q Did they apply any -- any legal regimes
12 from the states that were involved?

13 A Let's see, well, the case in the -- in
14 London, the maritime case, involved an international
15 contract. I mean, you had parties on each side, and
16 they had their own status, but the issues were really
17 under -- under -- well, actually that case was under
18 English law because the choice of law in the contract
19 was English law, so technically I would say it wasn't
20 applying international law.

21 Q Okay. Other than that the cases were
22 applying laws and norms and practices of
23 international law?

24 A Yes.

25 Q Any of the cases that you litigated

Page 56

1 party to that convention?

2 A Yes.

3 Q Okay. Is -- is the Palestinian
4 government a right -- sorry, a party to that
5 convention?

6 A No.

7 Q Okay. And do you -- what was the outcome
8 of that case?

9 A The -- it's the kind of proceeding where
10 you don't get an outcome in the sense of somebody
11 being at fault or not being at fault. The committee
12 included some mention of this situation in its
13 report, but -- but it didn't really make any, you
14 know, definitive findings.

15 Q Okay. So what -- I guess what do they
16 include in their report if they don't issue any
17 findings?

18 A They included a sentence in their report
19 referring to the international law relevant to
20 military activity, and I don't remember offhand the
21 exact formulation of what -- what they said. In
22 fact, they didn't refer to any particular incident
23 but just something to the effect of the importance of
24 following the rules of warfare.

25 Q Okay. And that report isn't -- it's not

Page 55

1 before international bodies or tribunals listed here,
2 did any of them involve the Middle Eastern Conflict
3 at all?

4 A I think the only one there was the
5 Committee on the Rights of the Child.

6 Q Okay. What was the issue in that case?

7 A It was the military action in Southern
8 Lebanon and an incident in which a number of children
9 were killed by a mortar fired by the Israel Defense
10 Forces in Southern Lebanon.

11 Q Okay. And you were lead counsel on that
12 case?

13 A Well, it's not really a case in that
14 committee -- the committee entertains information
15 relevant to states whose performance under the
16 Convention on the Rights of the Child are being
17 monitored. So it's not litigation in the sense of a,
18 you know, a party against a party.

19 Q Okay. And is -- it's the Convention on
20 the Rights of the Child?

21 A Yes.

22 Q Is the United States a party to that
23 convention?

24 A No.

25 Q Is Israel a right to that -- I mean a

Page 57

1 binding on anyone?

2 A It's not binding.

3 Q So does that Committee on the Rights of
4 the Child ever issue binding findings or reports?

5 A It doesn't have the power to issue any --
6 any binding decisions.

7 Q What does it have the power to do?

8 A It issues recommendations to states that
9 are parties to the convention suggesting to them if
10 the committee thinks they have been in violation but
11 those are not binding.

12 Q I see. So in this -- in the case you
13 were part of in 2002, they didn't issue a finding
14 that any particular party was in violation?

15 A I think that's fair to say, yes.

16 Q Okay. I know we talked briefly about
17 your amicus briefs.

18 A Uh-huh.

19 Q Is this -- turning back to your CV, is
20 this a comprehensive list of all of the amicus briefs
21 that you have authored in the course of your career?

22 A Yeah. I can't think of any that aren't
23 on this list; but, I mean, it's possible I could have
24 omitted something.

25 Q And which one of -- which ones of these

15 (Pages 54 to 57)

Page 58

1 briefs are relevant to the Middle East Conflict, if
2 any?

3 A None.

4 Q Okay. And have you been involved in any
5 litigation cases that involved the Antiterrorism Act?

6 A No.

7 Q Are you familiar with the Antiterrorism
8 Act?

9 A Only generally.

10 Q What is your familiarity with the
11 Antiterrorism Act?

12 A Which act are you talking about? Which
13 act of a particular year?

14 Q I'm actually not sure of the year. It's
15 the Antiterrorism Act that is -- that is applied to
16 the case, this case that you provided an expert
17 opinion for, this Sokolow case.

18 A I'm not familiar with it.

19 Q Okay. Do you have any professional
20 affiliations other than those that we've already
21 discussed?

22 A What do you mean by professional
23 affiliation?

24 Q For example, you are affiliated with Ohio
25 State University in a professional capacity. Do you

Page 60

1 Q Okay. I'm handing you a document that's
2 marked as Plaintiff's Deposition Exhibit 2. If you
3 could take a moment to review that and let me know
4 when you're finished.

5 A Yes.

6 Q Okay.

7 MS. MURPHY-JOHNSON: Do you
8 have a spare copy?

9 MS. MACHNES: I do
10 actually.

11 MS. MURPHY-JOHNSON: I
12 would be happy to take it off your
13 hands.

14 Q Are you familiar with this document?

15 A Yes.

16 Q And what is it?

17 A It's a list of my publications in
18 international law I prepared for purposes of this
19 proceeding.

20 Q When did you prepare it?

21 A During this past summer.

22 Q And, again, is it the same list of
23 publications that you would use generally, or was it
24 prepared specifically for this?

25 A It was prepared specifically because I --

Page 59

1 have any other affiliations with the universities or
2 organizations or?

3 A No.

4 Q No. What about the International
5 Committee for Palestinian Human Rights?

6 A Could you say that again.

7 Q The International Committee for
8 Palestinian Human Rights, were you a founding member
9 of that organization?

10 A That name isn't familiar to me.

11 Q Okay. And other -- so other than the
12 organizations and universities we've already
13 discussed, you aren't affiliated with any other
14 organizations that focus on international law?

15 A No.

16 Q And you aren't affiliated with any other
17 organization that is focused on the conflict in the
18 Middle East?

19 A Organizations, no. I mean, I may have
20 signed statements by organizations in the past, but
21 I'm not -- I don't have affiliations with any
22 organizations.

23 Q So you are not a member of any of them.

24 A I think not.

25 (Exhibit 2 marked on the record.)

Page 61

1 I only included publications on international law.

2 Q Okay. Let's start with the first section
3 on books. Is this a comprehensive list of books that
4 you have written in your career?

5 A Well, it's only those that relate to
6 international law.

7 Q Okay. So what other books have you
8 written that don't appear on this list?

9 A Okay. The book I mentioned earlier
10 "Basic Laws on the Structure of the Soviet State," a
11 book titled "The Soviet Foreign Trade Monopoly," a
12 book titled "Genocide in Cambodia." Those are the
13 only ones that I can think of that are not on the
14 list.

15 Q Okay. When did you publish "Basic Laws
16 on the Structure of the Soviet State"?

17 A 1969, approximately.

18 Q Okay. And when did you publish the book
19 on "Soviet Foreign Trade Monopoly"?

20 A 1973, approximately.

21 Q Okay. And what about the one on
22 "Genocide in Cambodia"?

23 A The year 2000.

24 Q And have there been subsequent editions
25 of those books or?

16 (Pages 58 to 61)

Page 62

1 A No.
 2 Q Okay. Which books on the list relate to
 3 the Middle East Conflict, if any?
 4 A Well, the first one.
 5 Q That's "The Case for Palestine" published
 6 in 2005?
 7 A Yes, uh-huh.
 8 Q How long is that book?
 9 A How long is it?
 10 Q Yes.
 11 A It's about 200 pages. Then the last two,
 12 "The Statehood of Palestine" and "The Six-Day War and
 13 Israeli Self-Defense."
 14 Q Okay. And how long are each of those
 15 books?
 16 A Each is approximately 200 pages.
 17 Q Okay. And do you use those books in your
 18 course work -- course work?
 19 A I don't assign them as reading so I
 20 suppose I don't use them in that sense.
 21 Q Okay. The list of articles that you have
 22 on Exhibit 2, is that a comprehensive list of all of
 23 your publications?
 24 A Well, it's only those that relate to
 25 international law.

Page 63

1 Q And did you make that determination?
 2 A Yes, yeah. It's a judgment call there.
 3 There may well have been articles that have some
 4 connection to international law that I didn't include
 5 there.
 6 Q Why did you limit your -- why did you
 7 limit the list of publications to those that relate
 8 to international law?
 9 A Because this case, as I understand,
 10 relates to international law.
 11 Q Okay. Other than the articles that are
 12 listed here have you written anything else relating
 13 to the Middle East?
 14 A Middle East, I think this includes all
 15 the articles that I've written that relate to any
 16 international law matters relating to the Middle
 17 East.
 18 (Exhibit 3 marked on the record.)
 19 Q Okay. I am handing you a document that
 20 is labeled Deposition Exhibit 3. If you could just
 21 take a minute to review it. Let me know when you
 22 have done so.
 23 A Yes. It's an article from the American
 24 University International Law Review.
 25 Q And it's called "The Oslo Accords: More

Page 64

1 Than Israel Deserves," correct?
 2 A Yes, uh-huh.
 3 Q And you wrote this?
 4 A Yes.
 5 Q When did you write this?
 6 A 1997.
 7 Q Why didn't you include this article in
 8 your list of publications?
 9 A It looks as if I missed it.
 10 Q Okay. Do you think there might be other
 11 articles like this that you didn't include on your
 12 list of publications that might relate either to
 13 international law or to the Middle East?
 14 A It's possible if I missed one, I could
 15 have missed another; but, I mean, I tried to include
 16 those that relate to international law, and I
 17 obviously missed this one.
 18 Q How did you -- how did you come up with
 19 the list of publications that you should include on
 20 Exhibit B?
 21 A Well, I went through my list of articles,
 22 and I excluded things that related -- much of what I
 23 had written in the past relates to the Soviet Union,
 24 Russian law, some that relates to Africa. I excluded
 25 those but I tried to include those that -- that

Page 65

1 relate to international law.
 2 Q Okay. First, what -- what list were you
 3 referring to that you said you went through and cut
 4 from?
 5 A A larger curriculum vitae.
 6 Q Okay. And when did you prepare that
 7 larger curriculum vitae?
 8 A Well, it's something that I've added to
 9 for many years so it's -- there's no particular date.
 10 Q Okay. And the articles that you
 11 mentioned having cut out, those don't relate to
 12 international law in any way?
 13 A That was my -- my intention was to
 14 eliminate those that don't relate to international
 15 law, yes.
 16 Q If I recall, I think there are some
 17 articles on Exhibit 2 that relate to, for example,
 18 the -- oops, sorry. Give me one second. It looks
 19 like most of the articles on your list of
 20 publications relate to the conflict in the Middle
 21 East; is that a fair characterization of the list?
 22 A If you look at the entire list, I would
 23 say the majority do not relate to the Middle East.
 24 Q Okay. Well, other than the ones that
 25 explicitly say the Palestine-Israeli Conflict or the

17 (Pages 62 to 65)

Page 66

1 Middle Eastern Conflict, the other ones have some
2 relation to the issues that you discuss in your
3 report such as statehood and state responsibility?

4 A Yes. Some would relate to issues that
5 are in -- in the report --

6 Q Okay.

7 A -- but without specificity to the Middle
8 East.

9 Q Okay. So just trying to understand if
10 there are -- if this list includes all of the
11 articles you wrote on international law or if there's
12 some subset of that that is more specific. For
13 example, international law that has some connection
14 to the Middle Eastern Conflict or the issues that are
15 involved in the Middle Eastern Conflict.

16 A I don't think there are others that are
17 not on the list that would relate to the Middle East
18 or to issues in it except for the one that we -- you
19 just talked about from the American University.

20 Q Are there others that are broader that
21 involve international law and have absolutely no
22 connection to the Middle East or statehood or state
23 responsibility?

24 A I don't think there are.

25 Q Okay, okay. So turning back to Exhibit

Page 67

1 3, the 1997 article you wrote called "The Oslo
2 Accords: More Than Israel Deserves," you didn't
3 include this on your list of publications, correct?

4 A Correct.

5 Q Would you agree that it's relevant here?

6 A Well, it relates to the Middle East.

7 Q Would you agree it's relevant to your --
8 to the expert opinion that you wrote in this case?
9 If I could turn your attention to page -- maybe page
10 297, it's the second to last page.

11 A Okay.

12 Q In the first paragraph of the section
13 called "The Israeli-P.L.O. Negotiations on a Final
14 Status," do you see that?

15 A Uh-huh.

16 Q The second sentence reads -- or I guess
17 I'll start with the first sentence "For Israeli, the
18 Oslo agreements do not represent a bad bargain.
19 Israel keeps the territory it took in 1948 and reaps
20 the rewards of the ethnic cleansing it carried out at
21 the time." Did you write that?

22 A Yes.

23 Q Okay. And do you still believe it to be
24 true?

25 A I mean, the Oslo agreements haven't led

Page 68

1 to anything so, I mean, it's still open as to how the
2 negotiations may or may not work out.

3 Q And what -- what's the significance of
4 the year 1943?

5 A That was the year Israel established
6 itself as a state.

7 Q Okay. So -- and the territory that the
8 second sentence refers to includes the territory that
9 is the state of Israel currently?

10 A Yes.

11 Q Which is different than the West Bank and
12 Gaza and the Golan Heights?

13 A Yes.

14 Q Okay. Do you have prior experience as an
15 expert witness?

16 A Yes.

17 Q And on how many cases total have you
18 served as an expert witness?

19 A Do you mean in the sense of testifying or
20 written?

21 Q Everything.

22 A Everything, maybe a dozen.

23 Q A dozen, okay. Do you recall how many of
24 those -- of those experiences as an expert were
25 before U.S. courts?

Page 69

1 A They were, yeah, primarily before U.S.
2 courts.

3 Q Do you remember any that were before
4 international bodies as opposed to U.S. courts?

5 A I was on expert witness in a case in
6 Canada.

7 Q What was that case?

8 A Related to deportation proceedings.

9 Q And it involved Canadian law?

10 A It involved Canadian law, uh-huh.

11 Q And I think you mentioned earlier the
12 Iran-Azerbaijan case that was -- that was also before
13 an international or?

14 A Well, it's an international
15 arbitration --

16 Q Right.

17 A -- mechanism.

18 Q Okay. Are those the only two that you
19 can recall which weren't before U.S. courts?

20 A Outside the United States, yes.

21 Q Okay. So you said about 12.

22 A Uh-huh.

23 Q Do the 2 international fall into that 12?

24 A Yes.

25 Q So probably about 10 expert witnesses in

18 (Pages 66 to 69)

Page 70

1 U.S. courts.

2 A Uh-huh.

3 Q Do you recall the names of those 10
4 cases?

5 A Let's see, yes, several of them were
6 cases under the Vienna Convention on Consular
7 Relations. They were trial level cases in Illinois
8 where I testified as an expert witness on the Vienna
9 Convention on Consular Relations, criminal cases. So
10 they are cases that probably never made it into a
11 reporter system.

12 Q That's Illinois state court?

13 A Illinois state court, yeah. There was
14 one that I do remember the name of in Virginia. It
15 was -- I suppose it was Commonwealth of Virginia
16 versus Malvo, M-A-L-V-O, was the -- that also related
17 to the Vienna Convention on Consular Relations. It's
18 a case involving some homicides that went under the
19 name of D.C. Sniper in that area. I was an expert
20 witness in the case of Malvo since there was an issue
21 under the Vienna Convention on Consular Relations.

22 Q Other than those do you recall the names
23 of any?

24 A There's one of an affidavit that I did in
25 a case in the federal court relating to prosecution

Page 72

1 A I would guess 2003 or '4. I mean, we
2 could find out easily. Now that you mention it,
3 there was another case in Virginia around that same
4 time also involving the Vienna Convention on Consular
5 Relations.

6 Q Okay. And the case you mentioned, the
7 Colorado case about a war.

8 A Uh-huh, uh-huh.

9 Q Around what year was that case?

10 A Around the year 2000.

11 Q And Hernandez versus the United States,
12 what year did you provide an expert affidavit for
13 that case?

14 A I think I included that one. Whatever
15 date I put on it.

16 Q It was 2010; does that sound right?

17 A Yes, 2010.

18 Q And these are all of the cases you can
19 remember specifically that you were an expert for?

20 A Yes.

21 Q Were you also an expert in a case called
22 Knox versus the Palestinian Libration Organization?

23 A No.

24 Q No, okay. Were you an expert for any
25 case that -- where the defendant was a Palestinian

Page 71

1 of some Cubans.

2 Q Was that Hernandez versus the United
3 States?

4 A Yes, yes.

5 Q Any others that you recall?

6 A I did one affidavit in a case in Colorado
7 a long time ago relating to someone who was involved
8 in a protest against some war that I don't remember.

9 Q Okay. So going back to the Illinois
10 cases.

11 A Uh-huh.

12 Q Do you remember the years of those?

13 A Those would have been around the year
14 2000, 2001, 2002. And they were in county courts in
15 the Chicago vicinity.

16 Q So all of -- all of the case -- all of
17 the Chicago, Illinois, Vienna Convention cases that
18 you were an expert witness for were around the
19 2000-2002 --

20 A Yes.

21 Q -- time period? Okay. And you think
22 there were several so maybe three?

23 A Three or -- maybe three.

24 Q Okay. What about the Malvo case, what
25 year was that?

Page 73

1 government organization?

2 A No.

3 Q Okay. And any of the 12 or so cases
4 where you were an expert, were you deposed in any of
5 them? I think you said earlier --

6 A I was not deposed, no.

7 Q Were you qualified by the courts in any
8 of those cases as an expert?

9 A Yes.

10 Q In all of them?

11 A Well, in all in which I testified, yes.

12 Q So you testified in all 12 of those, in
13 the 12 or so that you mentioned?

14 A Well, the ones where I -- I did oral
15 testimony in court, yes, I was qualified as an
16 expert.

17 Q About how many were you giving testimony
18 for?

19 A Seven or eight I think overall. Those
20 were where I presented an affidavit. I'm not really
21 sure what happened to my affidavit or whether --

22 Q Okay. The cases you listed, the Illinois
23 state court case and the Virginia cases and Colorado
24 cases, were those all cases that you provided
25 testimony for?

19 (Pages 70 to 73)

Page 74

1 A Well, the Colorado was written only.
 2 Q Okay.
 3 A The Illinois cases I -- I appeared and
 4 testified physically.
 5 Q Okay.
 6 A And the Virginia -- the two Virginia
 7 cases I testified in person.
 8 Q And other than those do you recall the
 9 names of any of the cases that you provided testimony
 10 for as an expert?
 11 A No.
 12 Q Of the cases you submitted an affidavit
 13 for as opposed to providing testimony, are you aware
 14 of any instance in which the court excluded your
 15 affidavit?
 16 A No.
 17 Q Are you aware --
 18 A There was another case in which I was an
 19 expert, was in the Eastern District of New York.
 20 Q What was that case?
 21 A It involved an extradition to Israel.
 22 Q You were an expert witness?
 23 A Yes, yes.
 24 Q What was the name of that case?
 25 A The individual's name was Atta, A-T-T-A.

Page 76

1 the belligerent occupation.
 2 Q So what were you qualified as an expert
 3 in in that case?
 4 A I don't recall exactly what the court
 5 qualified me as.
 6 Q And do you recall the outcome of that
 7 case?
 8 A The fellow was -- was extradited.
 9 Q He was extradited to Israel.
 10 A Uh-huh, uh-huh.
 11 Q Do you recall why he was extradited?
 12 A Well, the allegation was that he had
 13 blown up a bus, and he was subsequently acquitted of
 14 that after he was extradited, but the allegation at
 15 the time of the extradition proceedings was -- was
 16 that.
 17 Q Where was he alleged to have blown up a
 18 bus?
 19 A In the West Bank.
 20 Q Okay. And then he subsequently came to
 21 the U.S., and Israel wanted to extradite him back.
 22 A Exactly.
 23 Q And he was acquitted of the charges
 24 related to blowing up a bus in Israel?
 25 A After he was, right, extradited, yes.

Page 75

1 I don't remember the exact style of the case.
 2 Q Do you remember around what year?
 3 A It was early 1990s.
 4 Q And in that case was your report
 5 excluded?
 6 A I didn't present a report; I testified.
 7 Q You testified but you didn't provide a
 8 report?
 9 A I didn't provide anything in writing.
 10 Q Okay. And what was the outcome of that
 11 case?
 12 Actually, first, what was your opinion in
 13 that case?
 14 A The issue was the likelihood of physical
 15 mistreatment of the person were he to be extradited
 16 to Israel.
 17 Q And what was your opinion about that
 18 issue?
 19 A I said that he fit the profile of persons
 20 who had in the past been mistreated during
 21 interrogation.
 22 Q Okay. And what was the basis for having
 23 expertise in that area?
 24 A Well, I suppose it was based on my study
 25 of the -- of interrogation practices under the law of

Page 77

1 Q So he stood trial in Israel and was
 2 acquitted.
 3 A Yes.
 4 Q Okay. And what was the profile that you
 5 set forth in that case for people who would typically
 6 be subject to physical mistreatment were they
 7 extradited?
 8 A Palestinian male charged with an offense
 9 of violence in the West Bank directed against an
 10 Israeli target.
 11 Q And building that -- building that
 12 profile -- building an opinion related to that
 13 profile is -- so you built that profile based on just
 14 your studies of interrogation methods on belligerent
 15 occupation?
 16 A Well, yes. In addition there had been a
 17 commission set up by the Israeli government to study
 18 the issue called the Landau Commission, and it
 19 produced a report that indicated that persons with
 20 this profile were, you know, on occasion being
 21 mistreated under interrogation.
 22 Q Okay. Do you know -- do you know what
 23 proportion the Landau Commission cited as being the
 24 type of person that would be subject to mistreatment?
 25 A I don't think they made any finding about

20 (Pages 74 to 77)

Page 78

1 percentages, but they did suggest that it was enough
2 to be -- to be a problem.

3 Q Okay. I think earlier you said the
4 Landau Commission said they found that this type of
5 person on occasion would be subject to physical
6 mistreatment; is that --

7 A Uh-huh.

8 Q On occasion different from enough to be a
9 problem?

10 A Uh-huh, yeah. I don't remember now
11 the -- what that Commission said in terms of
12 frequency. I mean, they did publish a report that
13 said that it happened with enough frequency that it
14 was of public concern.

15 Q Okay. Other than your studies of
16 interrogation methods and other than the Landau
17 report, was your opinion in that Atta case based on
18 anything else?

19 A No. I think that would be it, yes.

20 Q Okay. So you provided an expert
21 affidavit in Hernandez.

22 A Yes.

23 Q Okay. And that was in the Southern
24 District of Florida?

25 A Yes.

Page 80

1 Q Okay. Did you testify in the Hernandez
2 case?

3 A I only made this written declaration.

4 Q Okay. And you are not aware of whether
5 the court accepted the affidavit or whether they
6 excluded it?

7 A My understanding is it was filed. I
8 don't know what the reaction of the court is, if any.

9 Q Okay. So you were retained by
10 defendant's counsel in the present case, the Sokolow
11 case, right?

12 A Yes.

13 Q And what -- I guess who first contacted
14 you?

15 A Someone from the Chevalier law firm in
16 Washington, I believe it is.

17 Q Do you remember who?

18 A Ms. Ferguson.

19 Q Okay. And when did she contact you?

20 A Probably early in this calendar year, I
21 don't remember the exact date.

22 Q Early in 2013?

23 A Early in 2013.

24 Q Had you worked for Miller & Chevalier
25 before?

Page 79

1 (Exhibit 4 marked on the record.)

2 Q Okay. Handing you a document marked as
3 Plaintiff's Deposition Exhibit 4, do you recognize
4 that doctrine?

5 A Yes, uh-huh.

6 Q And what is it?

7 A It's a declaration -- written declaration
8 in the Hernandez case that I made.

9 Q Okay. And Hernandez was the most recent
10 case -- other than the present case, the Hernandez
11 case was the most recent case for which you were an
12 expert witness?

13 A Yes.

14 Q What was the issue in the Hernandez case?

15 A It was the legality of the shooting down
16 of an aircraft over territorial waters.

17 Q Which territorial waters?

18 A It was the territorial waters of Cuba.
19 There was a factual issue in the case as to the
20 location in which the incident occurred. But I was
21 testifying on the assumption that it was in the
22 territorial waters.

23 Q Okay. And were you -- do you know what
24 the outcome of this case was?

25 A It's still pending as far as I know.

Page 81

1 A No.

2 Q When you first spoke to Ms. Ferguson in
3 early 2013, what were you asked to do?

4 MR O'TOOLE: I am going to
5 object at this point to the extent it
6 calls for communications between
7 Professor Quigley and counsel. That's
8 work product under Rule 26.
9 Q You can answer.

10 MR O'TOOLE: I am going to
11 instruct the witness not to answer.
12 It's privileged.

13 Q You are instructed to write an expert
14 opinion -- you were asked to write an expert opinion
15 in this case, correct?

16 A Yes.

17 Q Okay. And then you began your work to
18 write the expert report?

19 A Yes.

20 (Exhibit 5 marked on the record.)

21 Q Okay. Handing you a document marked as
22 Plaintiff's Deposition Exhibit 5, do you recognize
23 this document?

24 A Yes.

25 Q And what is it?

21 (Pages 78 to 81)

Page 82

1 A It's the report I prepared in this case.
 2 Q And together with this and together with
 3 Plaintiff's Exhibits 1 and 2, which are your CV and
 4 list of publications, is that what you submitted in
 5 its entirety?
 6 A Yes.
 7 Q How many times have you met with
 8 defendant's counsel from that initial conversation in
 9 2013 to the present? How many times have you met
 10 with plaintiff -- I mean defendant's counsel?
 11 A Once.
 12 Q Once, okay. And when was that?
 13 A Yesterday.
 14 Q That was for the purpose of preparing for
 15 this deposition?
 16 MR O'TOOLE: I mean, to the
 17 extent it calls for communications.
 18 MS. MACHNES: I am just
 19 asking.
 20 MR O'TOOLE: I will let him
 21 answer that question.
 22 A Yes.
 23 Q And how long was the meeting?
 24 A Two hours.
 25 Q Okay. So you prepared this report,

Page 83

1 correct?
 2 A Yes.
 3 Q Did you speak to anyone in the process of
 4 preparing the report?
 5 A I prepared it on my own. I didn't
 6 consult with anyone else.
 7 Q Okay. So what did you do to prepare the
 8 report?
 9 A I mean, I just looked at the issues that
 10 were raised and what needed to be addressed, and on
 11 the basis of what I already knew, I prepared the
 12 report.
 13 Q What issues had been raised?
 14 A Well, the question of the status of
 15 Palestine.
 16 Q Okay. And how did you become aware that
 17 that was an issue in this case?
 18 MR O'TOOLE: I am going to
 19 object to the extent it calls for
 20 communications from counsel.
 21 Q You can answer to the extent you learned
 22 from a document or.
 23 A Well, I believe I was provided with
 24 the -- with the complaint in the case that showed
 25 what the issues were.

Page 84

1 Q Okay. What materials did you rely on in
 2 order to prepare your report?
 3 A Largely the book that I wrote called "The
 4 Statehood of Palestine."
 5 Q And that book is referenced in the
 6 report?
 7 A It's on this exhibit.
 8 Q I can direct you to page 6 and the end of
 9 paragraph, Roman Numeral III.15. Is that the book
 10 you are referring to?
 11 A Yes, yes, it is.
 12 Q So the sources that you relied on other
 13 than that book, did you draw from that book?
 14 A Yes.
 15 Q Did you do any other additional research
 16 that -- beyond what you've done for the book in order
 17 to prepare the report?
 18 A Well, the resolution of the General
 19 Assembly of November 29, 2012, was -- was done
 20 subsequent to the date of the book so that was in
 21 addition to the book and the sources in the book.
 22 Q Other than this 2012 UN resolution, was
 23 there any additional research or material that you
 24 relied on in preparing this report outside of the
 25 realm of your book?

Page 85

1 A Well, I mean, I cite sources that were
 2 cited in my book. And, well, yeah, I think these
 3 sources were all in the book. It could be there
 4 might be one or two that were not in the book that
 5 I -- the Restatement, for example, on page 2, I don't
 6 recall whether I cited that in the book or whether I
 7 looked at that as I was preparing the report.
 8 Q Okay. How did you choose, I guess, what
 9 to draw from your book, which sources and which
 10 arguments to take from your book?
 11 A Well, the basic issue was statehood and I
 12 have quite a bit of information on that subject,
 13 about the factual underpinnings of a conclusion that
 14 Palestine is a state in the book and that's what I
 15 relied on.
 16 Q So I guess I'm asking did you -- did you
 17 choose the sources that you think best support
 18 that -- that opinion?
 19 A Well, I think I relied on all relevant
 20 sources. I don't think I excluded any that would
 21 have gone in the other direction.
 22 Q So you tried to take a subset of sources
 23 from your book that were relevant to all sides of the
 24 question?
 25 A Yes.

22 (Pages 82 to 85)

Page 86

1 Q Okay. Your comments --

2 A Of course, I am making a conclusion that
3 Palestine is a state. I mean, it's possible that
4 someone else could cite sources that go in the other
5 direction that I didn't mention here. I mean, I
6 would have responses to those but -- but there may be
7 sources that others would cite that I didn't cite
8 here.

9 Q Sure. You were compensated for providing
10 this report, correct?

11 A Yes.

12 Q And what was your compensation?

13 A \$250 an hour.

14 Q Okay. Is that the same hourly rate for
15 testimony? Is \$250 also the rate that you're
16 receiving for providing testimony, or is it exclusive
17 to your writing of the report?

18 A It's the same.

19 Q Okay. And should you provide testimony
20 at trial, is that also the hourly rate that you'll
21 receive for that work?

22 A I suppose so.

23 Q How much time did you spend writing the
24 report?

25 A I don't remember. It's in a document

Page 88

1 A Well, the history of the issue, how it
2 developed after the breakup of the Ottoman Empire,
3 the subsequent treatment of the issue through the
4 League of Nations and the United Nations, and then
5 the issues that are controversial as between the
6 parties presently.

7 Q In -- in the affidavit you provided for
8 the Hernandez case, you also claimed your expertise
9 was on international law generally, correct? Exhibit
10 4, I think.

11 A Uh-huh, yes.

12 Q And here in your report which is
13 Exhibit -- Plaintiff's Deposition Exhibit 5, you also
14 claim that you've had extensive practical experience
15 in the field of international law generally, right?

16 A Yes.

17 Q Okay. And you -- as opposed to your
18 practical experience, you go on to say that you have
19 also written extensively on that subject, the field
20 of international law.

21 A Yes.

22 Q Okay. Are you asserting any subject
23 matter expertise with respect to the Arab-Israeli
24 Conflict?

25 A Yes. I am asserting expertise with

Page 87

1 that I submitted to -- to the law firm.

2 Q Just an estimate is okay. Does about 19
3 hours sound right?

4 A Yes, yes, it does.

5 MS. MACHNES: Okay. I
6 think it's a good time to take a break,
7 and we'll come back.

8 (Recess taken.)

9 Q Professor Quigley, what are you offering
10 yourself as an expert in this case?

11 A International law.

12 Q Are you offering yourself as an expert in
13 any other area?

14 A Well, the -- the issue of statehood
15 involves the question of how the international
16 community has dealt with Palestine so I would say
17 that I have expertise on that issue.

18 Q And you write in your report you have
19 written extensively on the Middle East, right?

20 A Yes.

21 Q What do you mean by issues relating to
22 the Middle East other than Palestinian statehood?

23 A Well, I've written on a variety of issues
24 that relate to the Arab-Israeli Conflict.

25 Q What are the issues?

Page 89

1 respect to how the international community has dealt
2 with -- with the status of Palestine because that's
3 really the essence of the issue of whether an entity
4 is or is not a state. It's how the international
5 community deals with it so you do have international
6 law in the background, but the actual issue in my
7 report is more factual than legal in character.

8 Q But you don't expressly in your report
9 claim to have subject matter expertise with respect
10 to the Arab-Israeli Conflict; is that right?

11 A Well, I'm not sure what you mean by
12 subject matter expertise on the Arab-Israeli
13 Conflict.

14 Q Well, you say you have extensive
15 practical -- in this paragraph Roman Numeral I.2 you
16 say you have extensive practical experience in
17 international law, and you say you have written
18 extensively on international law and in particular on
19 issues relating to the Middle East.

20 A Yes.

21 Q So you don't expressly assert subject
22 matter expertise with respect to the conflict in the
23 Middle East -- or, sorry, with respect to the
24 Arab-Israeli Conflict specifically?

25 A Well, I have certain expertise on

23 (Pages 86 to 89)

Page 90

1 international law and on international laws related
2 to the Middle East and on how those issues have --
3 have played out at the international level which does
4 get into factual matters of how the international
5 community has -- has dealt with Palestine in terms of
6 its status.

7 Q Okay. So here when you're -- when you're
8 listing the basis for why you would qualify as an
9 expert and you say that you have written extensively
10 on issues relating to the Middle East, you are
11 implicitly including there the Arab-Israeli Conflict?

12 A Yes.

13 Q Okay. And you're also implicitly
14 including there the issue of Palestinian statehood?

15 A Yes.

16 Q Okay. Other than extensive writing on
17 the issues relating to the Middle East, your
18 experience with those issues is the visits that
19 you've -- the visits to Israel that you've done
20 starting in the 1970s?

21 A I'm sorry. Could you repeat the
22 question.

23 Q Other than extensive writing is what you
24 say in your report, what is your experience as an
25 expert on issues relating to the Middle East?

Page 91

1 A Well, it comes from research and looking
2 at relevant documents and international practice.

3 Q Okay. But you don't have any U.S.-based
4 practical experience relating to litigation that
5 involved the Middle East -- that involves the Middle
6 East Conflict?

7 A I haven't been involved in U.S.-based
8 litigation relating to the conflict.

9 Q Okay. Do you have any experience related
10 to terrorism?

11 A To the extent that's an issue that raises
12 international law matters, you know, I've had some
13 familiarity.

14 Q And how would you define terrorism?

15 A Well, terrorism is something that there's
16 been great difficulty in defining and there have been
17 a variety of definitions. It's generally said to be
18 acts of violence that relate to some kind of demand
19 on a public authority or aimed at spreading panic
20 throughout a population but there's some treatment of
21 it by the UN Security Council.

22 Q What is that treatment?

23 A I don't recall offhand what the -- what
24 they've said. The definitions are always rather
25 ambiguous.

Page 92

1 Q Okay. Understanding that there's some
2 ambiguity with the definition, what is your
3 definition of terrorism?

4 A I don't have a definition of terrorism.

5 Q Okay. Are acts of terrorism, however
6 they are defined, are they ever justified under
7 international law?

8 A That's difficult because it does depend
9 on what you define as terrorism. What one person
10 might find as terrorism another person wouldn't. And
11 given the ambiguity of there being no international
12 definition, if you have an act that falls within
13 terrorism under any of the definitions, it would be
14 unlawful, yes.

15 Q Okay. So what are -- what are the
16 definitions of terrorism that -- under which it would
17 be lawful under international law, if there are any?
18 You said that there are varying definitions of
19 terrorism, and the legality of acts of terrorism
20 depends on the definitions so if you could give us an
21 example of a definition of terrorism that would not
22 be illegal.

23 A Well, you know, this is not something I
24 have thought about. This has no relation to the
25 report that I've -- I filed in this case.

Page 93

1 Q Well, terrorism is an issue of
2 international law, right?

3 A Yes.

4 Q Okay. So.

5 A So is the territorial sea but.

6 Q As an expert on international law, are
7 you aware of a definition of terrorism that any --
8 that you've heard of where the acts are justified
9 under any legal regime?

10 A No.

11 Q Okay. And are suicide bombings targeting
12 unarmed civilians ever justified?

13 A No.

14 Q Again, as an expert on international law,
15 are you familiar with any specific laws,
16 international law, that relate to terrorism?

17 A When you say international laws, what do
18 you mean --

19 Q Norms, conventions, any of the -- any of
20 the sort of authoritative documents that make up the
21 body of international law.

22 A There have been some Security Council
23 resolutions on the financing of terrorism that are
24 aimed at preventing financing of terrorism.

25 Q Any others?

24 (Pages 90 to 93)

Page 94

Page 96

1 A Not that I can think of.

2 Q Okay. Are those Security Council
3 resolutions binding on the United States?

4 A I would have to look at a particular one.
5 Some of the language is in preambles, in resolutions,
6 and there's a bit of uncertainty as to what the
7 significance of the language in a preamble is.

8 Q Okay. Are any of the Security Council
9 resolutions binding on the governing authorities of
10 Palestine?

11 A I mean, I have to look at particular
12 ones. I can't really answer that offhand.

13 Q Okay. Do you recall how many Security
14 Council resolutions touched this issue?

15 A No.

16 Q Okay. Do you recall any -- other than
17 language in the preamble, do you recall language in
18 the body of those resolutions that are related to
19 terrorism?

20 A No.

21 Q Okay. Again as an expert on
22 international law, are you familiar with any U.S.
23 laws that relate to terrorism?

24 A I mean, we have many laws that address
25 violence in various forms, and acts of terrorism

1 is it ever lawful for a government to engage in
2 terrorism?

3 A No.

4 Q Okay. And is it ever lawful for a
5 government to materially support terrorism?

6 A That's very ambiguous as to what that
7 might mean so I'm less clear on what -- what that
8 might entail.

9 Q What is ambiguous about it?

10 A As to what "materially support" means.

11 Q For example, we talked about a U.S. law
12 related to financing terrorism.

13 A Uh-huh.

14 Q Is that -- is that a form of material
15 support that is -- that is ever allowed under the
16 laws that we discussed?

17 A Yeah. I mean, it would depend on how the
18 support is given. The reason that I'm reluctant to
19 state anything is based in part on a decision of the
20 U.S. Supreme Court a year or so ago in the Holder
21 case where the U.S. Supreme Court said that giving
22 legal advice could be material support for terrorism.

23 And, you know, whether that would or
24 would not be is -- well, I suppose the Supreme Court
25 thinks that it is material support, but it makes me

Page 95

Page 97

1 could well be prosecuted under those laws.

2 Q So you are referring to like a law on
3 murder, for example?

4 A Yes.

5 Q Okay. Are you familiar with any U.S.
6 laws that relate to terrorism specifically?

7 A Well, there was a law adopted in the late
8 '80s that was called terrorism that prohibited
9 financial assistance to the PLO.

10 Q Okay. Do you know whether that law is
11 still in effect?

12 A I haven't followed it in recent years.

13 Q Do you recall what circumstances
14 surrounded that law coming into effect?

15 A You mean the reasons why it was adopted?
16 I believe there is language in preamble form stating
17 that the PLO had been involved in terrorist activity.

18 Q Okay.

19 A But one could look at it and see.

20 Q What do you mean by preamble form?

21 A Just as with a treaty, with a statute,
22 you know, you have language that is put in by way of
23 preamble paragraphs.

24 Q Okay. So under any of the laws that we
25 just went over or any others that you can think of,

1 uncertain what the concept material support includes.

2 Q Do you disagree with that opinion that
3 material support could include giving legal advice?

4 A Well, the issue that was actually put
5 during the oral argument was what if a lawyer advises
6 a terrorist organization to stop committing terror,
7 and the response from the solicitor general was, yes,
8 that's material support for terrorism. I would
9 disagree with that. It seems to me if a lawyer
10 advises a terrorist group not to commit terrorism,
11 that that is not material support for terrorism.

12 Q What if the lawyer -- what if the lawyer
13 provided advice that a certain act did not constitute
14 terrorism and the Supreme Court had -- had taken the
15 position that it did?

16 A That would be a matter of legal advice
17 and if it's, you know, reasonable legal advice, that,
18 you know, there would be -- I wouldn't think that
19 there is anything sanctionable under the usual rules
20 on attorney activity.

21 Q Okay. Can you think of any examples of
22 government support -- government support of terrorist
23 acts that are legal?

24 A No.

25 Q Okay. I want to consider now a more

25 (Pages 94 to 97)

Page 98

1 specific hypothetical example. And ultimately I want
2 you to tell me whether under any legal regime,
3 international law regime, under the international law
4 regime or any domestic legal regime, this type of --
5 this type of factual scenario could ever be
6 justified.

7 So suppose you have a group of eight
8 security officials that work for a government of
9 another entity, of a state or an entity, and those
10 eight state-employed security officials plan together
11 and ultimately perpetrate acts of violence against
12 unarmed civilians, and they are doing so for some
13 kind of political purpose. As an expert on
14 international law and a U.S. qualified attorney, do
15 you think there is any basis for those officers to
16 engage in such behavior under the law?

17 A I'm sorry. Could you -- I hate to ask
18 you to repeat but could you repeat it.

19 Q Okay. We are considering a hypothetical
20 example of a group of -- a group of state-employed
21 security officials who get together and conspire to
22 plan and ultimately perpetrate acts of violence
23 against unarmed civilians for a political purpose.
24 Is there any -- is there any legal regime that says
25 that that -- those acts are legal?

Page 99

1 A No.

2 Q Okay. And that's true under
3 international law?

4 A Yes. It would depend on the context. If
5 it were in a warfare context, it would be a violation
6 of the laws of warfare.

7 Q Okay.

8 A If it were outside the warfare context,
9 it would be illegal nonetheless.

10 Q Under different laws.

11 A Yes.

12 Q Which laws specifically?

13 A Well, it would be murder under the
14 domestic law of the territory where it occurred.

15 Q Okay, okay. Now, add the following facts
16 to the hypothetical I've put before you just a second
17 ago, suppose that the security officials are
18 successful, they have committed these acts of
19 violence against unarmed civilians for political
20 purpose. And suppose now that they were arrested and
21 convicted for those acts. And suppose that while
22 they are imprisoned they remain on their former
23 employer -- their government's payroll. Is there
24 anything under international law that justifies the
25 government keeping those people on their payroll,

Page 100

1 those convicted state -- those convicted state
2 employees?

3 A I don't know of anything in international
4 law that relates to maintaining people on a payroll
5 while they are in prison and presumably can't provide
6 any services, I mean, whether they still might have a
7 contract of employment that hasn't been abrogated. I
8 mean, I don't think there is anything in
9 international law that -- that says anything
10 specifically about your hypothetical.

11 Q Is there nothing in international law
12 that says that those government employees should be
13 terminated as government employees having been
14 convicted of the acts that I've put before you?

15 A I'm not aware of anything in
16 international law that would say that.

17 MR O'TOOLE: I think we are
18 getting pretty far afield here. I
19 mean, he is being offered as an expert
20 of Palestinian statehood.

21 MS. MACHNES: I think he
22 has said he is an expert on
23 international law.

24 MR O'TOOLE: He has but if
25 you read his report, there isn't

Page 101

1 anything anywhere near these
2 hypotheticals.

3 Q So you're not aware of any international
4 law that speaks to that, whether it's that an
5 international -- that a state or an entity is --
6 should terminate those employees or should not
7 terminate those employees? You are not aware of any?

8 A No.

9 Q Okay. What about any U.S. law?

10 A I'm -- there may be. I am not aware of
11 any.

12 Q Okay. And in your opinion -- what's your
13 opinion with respect to whether a government should
14 keep employees who were convicted of violent attacks
15 against unarmed civilians, being kept on their
16 government payroll?

17 MR O'TOOLE: Object on the
18 grounds of relevance.

19 Q You can answer.

20 A I mean, if they had just forgotten the
21 person is on the payroll and the person is in prison,
22 can't do anything, there's no -- there's not much of
23 an issue. Certainly the person that is -- has been
24 convicted shouldn't be encouraged in any way to
25 continue to do that kind of activity.

26 (Pages 98 to 101)

Page 102

1 Q And remaining on a payroll would
2 constitute some form of encouragement?

3 A Well, I am not sure what remaining on a
4 payroll means when a person is in prison and
5 presumably -- are they being compensated while they
6 are in prison?

7 Q To the extent the person gets out of
8 prison and the money has now been in a pile in a bank
9 account somewhere that they then can access, they are
10 being compensated while in prison.

11 MR O'TOOLE: Is that
12 question a hypothetical?

13 MS. MACHNES: We are
14 talking about a hypothetical.

15 MR O'TOOLE: Could you
16 repeat the hypothetical?

17 Q We are talking about a group of
18 state-employed security officers who have planned and
19 perpetrated acts of violence against unarmed
20 civilians, who were then convicted of those acts, are
21 imprisoned, and while they are imprisoned remain on
22 the government's payroll.

23 A And you are asking for my opinion apart
24 from what the law might or might not be on this as to
25 whether there should be a law that --

Page 103

1 Q Whether you think that something -- a
2 government -- whether you think that's a legitimate
3 thing, a justifiable thing for a government to do, to
4 keep state -- to keep people who were state
5 employees, who have then been convicted of these acts
6 of violence, to keep them on their payroll after they
7 have been convicted and imprisoned?

8 A I don't really have an opinion on that.

9 Q Okay. How about if while these same
10 hypothetical security officers after they're
11 convicted and imprisoned are given promotions, not
12 only are they kept as government employees but they
13 are given promotions while they are in jail just on
14 their -- in their files.

15 A I don't have an opinion on that.

16 Q Okay. Are you aware of any international
17 law that allows a government to give such promotions?

18 A I'm not aware of any international norms
19 one way or the other.

20 Q Okay, okay. So in your report, which is
21 Plaintiff's Deposition Exhibit 5, you take the
22 position that "The Palestinian Authority, also known
23 as the Palestinian National Authority, is a governing
24 authority of Palestine," correct?

25 A Yes.

Page 104

1 Q By the way for purposes of this
2 deposition what is your definition of Palestine?
3 What are we referring to when we say -- when we use
4 the term "Palestine"?

5 A It is a state.

6 Q Okay. By using the term Palestine, are
7 you prejudging the -- whether -- the issue of whether
8 Palestine is a state or not?

9 A Well, I mean, the term is used in many
10 ways. The term can be used historically for ancient
11 times. The term is used in many ways. It's my
12 conclusion that Palestine is a state.

13 Q Okay. But by using the term you are not
14 necessarily acknowledging one way or the other
15 whether Palestine is a state.

16 A Well, I mean, if I am talking about
17 ancient history, I can use the term Palestine in
18 another sense, but the way I am using it presently,
19 yes, it does imply that Palestine is a state.

20 Q Okay. How do you define governing
21 authority?

22 A Well, an entity that carries out
23 governmental functions.

24 Q Okay. And your position is that the
25 Palestinian Authority, which I'll refer to as the PA,

Page 105

1 is a governing authority of Palestine, right?

2 A Yes.

3 Q So are there other governing authorities
4 of Palestine?

5 A Yes, the Palestine Libration
6 Organization.

7 Q Okay. Are there any others?

8 A Hamas would be another one.

9 Q Okay. And any others?

10 A No.

11 Q Have there been any others through the
12 course of history, governing authorities of the
13 territories, that you believe constitute a state of
14 Palestine?

15 A Well, there was the Ottoman Empire for
16 several centuries, up until the First World War.

17 Q Anything else?

18 A You are asking what about governing
19 authorities of the area? Well, during the period
20 after the First World War, the British government had
21 administrative functions with regard to -- to
22 Palestine. So it would have been an authority,
23 although it was not -- I mean, it was administering
24 the state of Palestine. After the Second World War,
25 the Egyptian government was in belligerent occupation

27 (Pages 102 to 105)

Page 106

1 of Gaza so it was -- it was a -- you might say a de
2 factoid administering authority, similarly for Jordan
3 and the West Bank, and then Israel became a
4 belligerent occupation -- belligerent occupation
5 after 1967.

6 Q Okay. Focusing on the 2002-2004 period,
7 what were the governing authorities of Palestine?

8 A It would be the Palestinian National
9 Authority and the Palestine Liberation Organization.

10 Q Okay. And the Palestinian National
11 Authority is also the Palestinian Authority which --

12 A Yes.

13 Q -- can also be abbreviated PA?

14 A Yes.

15 Q And the PLO is the Palestinian Liberation
16 Organization --

17 A Palestine Liberation Organization.

18 Q When did the PA become a governing
19 authority?

20 A Well, first, it would have been under
21 the -- the agreement on Jericho and the Gaza Strip,
22 1994.

23 Q And what are the PA's governmental
24 functions?

25 A Well, it carries out the kinds of

Page 108

1 as representative of the Palestinian people, right?

2 A Yes.

3 Q Okay. What are the governmental
4 functions of the PLO?

5 A The PLO is involved primarily with
6 representing Palestine at the international level.
7 It maintains embassies, diplomatic accord around the
8 world.

9 Q Okay. And where does the PLO derive its
10 authority from?

11 A Well, it's like any governing authority.
12 It derives its authority ultimately from the
13 population of the country.

14 Q And it -- it has -- it acts according to
15 a charter, right?

16 A It has a document, yes, called a charter.

17 Q Okay. Is the PLO's authority related in
18 any way to the PA's authority?

19 A Yes. It was the PLO that actually
20 constituted and created the P -- what you are calling
21 the PA.

22 Q Okay. Do their zones of responsibility
23 overlap in any way?

24 A They may, though broadly the functions
25 are separate.

Page 107

1 functions that governments normally do in -- in
2 certain of the territory of Palestine.

3 Q Can you list the functions specifically?

4 A Collecting garbage, administering the
5 civil service of the country.

6 Q Those are just some examples?

7 A Those are examples of governing
8 activities.

9 Q Okay. And you're familiar with the
10 various documents that make up the Oslo Accords,
11 right?

12 A Yes.

13 Q And the parties to the Oslo Accords were
14 the PLO, Palestine Liberation Organization, and the
15 state of Israel, right?

16 A Yes.

17 Q And you're also familiar with the United
18 Nations General Assembly Resolution 69/17? Right?
19 It's the 2012 General Assembly resolution.

20 A The numbers are?

21 Q 067/19.

22 A Yes.

23 Q You are familiar with that resolution?

24 A Yes.

25 Q And in that resolution the PLO is named

Page 109

1 Q Okay. And are they -- are the -- is the
2 authority of the PLO broader or more -- or more
3 narrow than the PA in any way?

4 A Well, they are different. They are
5 different spheres of activity. I hesitate to
6 characterize quantitatively.

7 Q Okay. Are they -- are they both limited
8 in any way?

9 A Well, it's -- I mean, it's a matter of
10 shared functions, I would say.

11 Q What do you mean by that?

12 A That they have an understanding as to
13 which one does which kind of function.

14 Q Okay. Is there any overlap in terms of
15 personnel?

16 A Yes, I think there is.

17 Q And what's the extent or nature of that
18 overlap?

19 A I -- I don't know that precisely enough
20 to give you an answer.

21 Q Do you have any general understanding
22 about the nature of the overlap between the personnel
23 in the PA and the PLO?

24 A Well, the top, I believe Mr. Abbas is the
25 chair of the PLO and is also the head of the PA, you

28 (Pages 106 to 109)

Page 110

1 know.

2 Q Okay. And so you are familiar with the
3 1995 agreement that's referred to commonly as the
4 Oslo Accord II, correct?

5 A The interim agreement of September, 1995,
6 yes.

7 Q Okay. And in that agreement are there
8 any limitations on the Palestinian Authority's
9 authority?

10 A It's specified it's not supposed to
11 represent Palestine at the international level.

12 Q Okay. And that didn't have any effect on
13 the PA -- excuse me, the PLO's authority to conduct
14 activity at the international level.

15 A Correct.

16 Q Okay. So in your opinion what exactly is
17 the distinction between the PA and the PLO?

18 A Well, the PA carries out functions in the
19 administration of territory, whereas, the PLO
20 represents Palestine at the international level.

21 Q Okay. But they may have overlapping
22 personnel.

23 A Yes.

24 Q And they may have other overlapping
25 specific areas of responsibility for.

Page 112

1 situations where there is -- where the governing
2 authority is not able to exercise any control in the
3 state, for example, when it's under belligerent
4 occupation, so you might not have any actual exercise
5 of authority by any governing authority, but you can
6 still have a state.

7 Q Okay. Oh, and by the way, what are the
8 governmental functions of Hamas, which you mentioned
9 as another one?

10 A It administers the -- in the Gaza Strip.

11 Q Okay. In your report you also take the
12 position that Palestine is a state, right?

13 A Yes.

14 Q Okay. And generally what body of law do
15 you use to support that opinion?

16 A Well, it's international law that is --
17 is the background that determines when an entity is a
18 state but -- but that is -- but what international
19 law says is that states are those entities that are
20 accepted by the existing community of states as being
21 a state.

22 Q Okay. Be fair to say this is a
23 relatively complicated area and analysis?

24 A It can be, yes. There are no bright
25 lines in international law as to what level of

Page 111

1 A Yes.

2 Q Okay. Is this -- is the nuances of
3 the -- are the nuances of the distinction between the
4 PLO and the PA in your report at all?

5 A Well, they are both governing authorities
6 of Palestine, so for purposes of my report it doesn't
7 really matter precisely which functions are carried
8 out by which one.

9 Q Okay. It's just relevant that there is a
10 governing authority of --

11 A That's right, that there is -- that there
12 is a -- a governing authority.

13 Q Okay. And why is that relevant?

14 A Well, that it acts on behalf of a state.

15 Q Okay, okay. So in -- in opining on
16 government authority of a state, and in particular
17 Palestine here, do both or all of the state's
18 governing authorities need to be considered?

19 A Well, I mean, the issue is whether there
20 is a state. The governing arrangements can be made
21 in various ways.

22 Q So as long as there is a governing
23 authority, it's not necessary to consider any other
24 governing authorities.

25 A Well, that's right, except that there are

Page 113

1 acceptance is sufficient or exactly how that
2 acceptance comes about.

3 Q And in addition to no bright lines,
4 there's really no conformity internationally as to
5 what -- how to conduct this analysis or what would
6 satisfy definitions under this?

7 A There isn't. It's just when the
8 expressions of acceptance of an entity get to a
9 certain level, then -- then it becomes difficult to
10 say that an entity is not a state.

11 Q Is there any conformity as to what that
12 level of acceptance is?

13 A There really isn't. I mean, one example
14 would be the admission of Israel to the United
15 Nations in 1949 at a time when it had some acceptance
16 by other states but -- but many states were still not
17 sure what -- what their opinion was. But it was
18 admitted to membership in the United Nations, and a
19 requirement of admission is that an entity is a
20 state. The -- Palestine has very significant
21 international acceptance, I would say sufficient to
22 make it a state by whatever the standard might be.

23 Q But it hasn't -- as opposed to Israel it
24 hasn't gained full membership in the United Nations,
25 correct?

29 (Pages 110 to 113)

Page 114

1 A That's correct.
 2 Q So in -- okay.
 3 In your opinion what is the difference
 4 between statehood and being an independent state?
 5 A Independence can be taken in two
 6 different ways. It can mean that a state has
 7 complete control over its -- its own affairs. I
 8 think that's not the sense in which it -- it is
 9 appropriately used here because that would mean that
 10 a state under belligerent occupation, let's say
 11 Kuwait during the time it was occupied by Iraq, would
 12 not have been considered a state.
 13 I think what independence means is that
 14 the entity is -- is considered to be the sovereign in
 15 the territory. You might say in a legal sense that
 16 is -- it may not, in fact, be able to control, but
 17 nonetheless it is the entity that is accepted as
 18 being that state.
 19 Q Okay. And those were two differing --
 20 two differing definitions of independence, correct?
 21 A Yes, yes.
 22 Q And how does that differ from statehood?
 23 A Well, for statehood I think independence
 24 in the -- in the second sense is required, that an
 25 entity is recognized as being the legitimate

Page 115

1 authority of the -- of a particular territory. It's
 2 not necessary that it actually be in control if a
 3 foreign army comes in and takes it over.
 4 Q Okay. And where -- what's your basis
 5 for -- for these differing definitions and their
 6 relationship to each other?
 7 A Well, it's the state practice. It's the
 8 practice of states in accepting, you know, putative
 9 entities, putative states into the international
 10 community as states.
 11 Q But as we saw in the different treatment
 12 of Israel and Palestine, for example, there is not
 13 really any conformity as to state practice even; is
 14 that a fair characterization?
 15 A I am not sure what you mean by conformity
 16 of state practice.
 17 Q Well, you said that the -- you're drawing
 18 these definitions and the distinctions between them
 19 from state practice.
 20 A Uh-huh, uh-huh.
 21 Q But there's no way to look at state
 22 practice in a uniform way, right?
 23 A Yeah. There's no specific rule that says
 24 what the level of acceptance has to be. There is
 25 probably a norm that once you have very substantial

Page 116

1 acceptance of an entity, that then it is a state
 2 under international law.
 3 Q And that's -- that's an international
 4 norm, correct?
 5 A Yes.
 6 Q And is that different from -- and is an
 7 international norm binding?
 8 A Yes.
 9 Q How so?
 10 A Well, the -- once an entity becomes
 11 sufficiently accepted as a state, it is considered to
 12 be a state and -- and that -- that is an
 13 international norm.
 14 Q Okay. And in your opinion Palestine has
 15 reached a sufficient level of acceptance to
 16 constitute a state, right?
 17 A Yes.
 18 Q But at the same time it has not gained
 19 full membership before the UN, right?
 20 A Yes.
 21 Q Okay, okay. So in your report you make
 22 three different sort of independent arguments that
 23 Palestine is a state, correct?
 24 A I would have to look to see what.
 25 Q Well, first, you make an argument that

Page 117

1 Palestine was a state beginning in the 1920s and
 2 continues as such to the present time, right?
 3 A Yes, that's correct.
 4 Q Okay. You also make an argument that
 5 Palestine fits the criteria for statehood under the
 6 international definition of statehood, right?
 7 A Yes.
 8 Q Okay. And you also make a third argument
 9 that Palestine qualifies as a state because it is --
 10 it has reached a level of acceptance among the
 11 international community such that it qualifies as a
 12 state, right?
 13 A Yes, uh-huh.
 14 Q I want to go through these -- those
 15 three. Do you make any other arguments in your
 16 report other than those three that Palestine
 17 constitutes a state?
 18 A Well, the basic argument is that it -- it
 19 has been accepted by the international community.
 20 That's the key argument. You don't really need the
 21 others.
 22 Q Uh-huh.
 23 A It is my opinion that Palestine became a
 24 state in the 1920s. If someone wants to disagree
 25 with my opinion on that, that would -- wouldn't mean

30 (Pages 114 to 117)

Page 118

1 Palestine is not presently a state. As well, I in
2 the report referred to the so-called Montevideo
3 criteria for statehood but I indicate that that is
4 not a test that is to be applied by a court but it's
5 a set of factors that may or may not be considered by
6 states in their determination to accept an entity as
7 a state. So the acceptance is the basic and really
8 the only necessary factor to make Palestine a state.

9 Q Okay. Are you aware that -- are you
10 familiar with Second Circuit case law -- U.S. Second
11 Circuit case law on Palestinian statehood?

12 A No.

13 Q Okay. Are you aware that the Second
14 Circuit has adopted the Montevideo -- I am not sure
15 how you pronounced it, Montevideo factors as the
16 relevant analysis for determining whether a state has
17 been recognized as such?

18 A I do recall those factors being
19 considered in -- I am not sure if it's the Second
20 Circuit or some other circuit in -- in the matter.
21 But I -- as I say, those are not the relevant --
22 that's not the relevant analysis for a court. As I
23 explained in my report, it's the acceptance of an
24 entity by the community of states and that community
25 of states may or may not utilize the Montevideo

Page 119

1 criteria in deciding whether to accept something as a
2 state.

3 Q Okay. And when you say it's not the
4 relevant analysis for courts, what courts are you
5 talking about?

6 A Well, any court. I mean, if you look at
7 the Permanent Court of International Justice back in
8 the 1920s where it had to decide whether Palestine
9 was a state then, it did not go through the factors
10 then that were a few years later put into the
11 Montevideo Convention. It looked at how Palestine
12 was accepted in the international community, and at
13 that time the primary factual point was the Lausanne
14 Treaty of 1923 where Palestine is -- is recognized as
15 a state by -- by the major powers that were in the
16 process of concluding the First World War.

17 Q Okay. What about other than the Court of
18 International Justice, are you referring also to
19 domestic U.S. courts when you say that the relevant
20 analysis is not the Montevideo factors?

21 A Yes. It's true for any decision making
22 body that has to determine whether an entity is or is
23 not a state. The essence is the acceptance of the
24 entity in the international community.

25 Q And is that your opinion, or is that

Page 120

1 based on those courts' opinions?

2 A Well, it's based on the Permanent Court
3 of International Justice opinion where it follows
4 that approach.

5 Q Any other more recent court decisions
6 that support your opinion or what the Court of
7 International Justice did in 1925?

8 A Well, yeah. The issue of Palestine
9 state, it hasn't come up again squarely before an
10 international court since that time.

11 Q What about U.S. courts?

12 A In U.S. courts it has, yeah, and the
13 decisions have been mixed. I cite one in the report,
14 the Kletter case, where a U.S. court said that
15 Palestine was a state. It didn't talk about the
16 Montevideo criteria. It didn't, in fact, talk about
17 its basis in general. It just simply --

18 Q Was the issue before the Kletter court
19 whether Palestine was a state?

20 A Well, yes. The fellow was saying I
21 didn't effectively make myself a national of another
22 state because it was Palestine where I made myself a
23 national and he was trying to say Palestine wasn't a
24 state, therefore, he still had U.S. citizenship and
25 the court said, no, pal, you gained nationality in

Page 121

1 another state, namely, Palestine.

2 Q But the issue before the primary holding
3 of the Kletter case was about nationality; it wasn't
4 about -- it wasn't about whether Palestine was a
5 state. It was about the plaintiff's nationality in
6 that case, right?

7 A Well, yes, that's how the case arose.

8 MS. MACHNES: If you guys
9 want to stop for lunch, we can now. I
10 can go a little further, but I am at a
11 point where we could take a break if we
12 want.

13 (Discussion off the record.)

14 (A lunch recess was taken at 12:02 p.m.)

15 EXAMINATION CONTINUED BY

16 MS. MACHNES:

17 Q Professor Quigley, earlier in the
18 deposition -- oh, actually, first, let me ask you
19 during the breaks have you discussed with counsel at
20 all the substance of your testimony?

21 A No.

22 Q No. Have you taken any advice from
23 counsel since this deposition started about your
24 testimony?

25 A No.

31 (Pages 118 to 121)

Page 122

1 Q Okay. Earlier you cited that one of the
2 sources for your -- for support of your assertion
3 that Palestine was a state from the 1920s period
4 forward was the Treaty of Lausanne, correct?

5 A Yes.

6 Q What was that document?

7 A It was the treaty of -- of peace that
8 ended the First World War as between the European
9 allies and Turkey.

10 Q Okay. And who were the parties to that
11 treaty?

12 A I would say -- well, on one side was
13 Turkey. On the other side were the European allies.
14 And I'm not going to be able to name them all but
15 Britain, Italy, France, a couple of others.

16 Q Was the United States a party to that
17 treaty?

18 A No.

19 Q Okay. Does -- does the Treaty of
20 Lausanne mention the state of Palestine?

21 A It mentions the territories that are
22 being detached from the Ottoman Empire, the Turkish
23 Empire. It doesn't mention them by name, but they
24 were Syria, Iraq, and Palestine.

25 Q And in what context does it mention those

Page 124

1 A Yes.

2 Q And how does it satisfy the international
3 definition of statehood?

4 A It is accepted by the community of states
5 as a state. I mean, it's accepted by -- by some --
6 by different states in different ways, but it's
7 actually accepted by I would say virtually all states
8 including Israel and including the United States.

9 Q Okay. What is in your words the
10 international definition of statehood?

11 A Well, it relates to the -- the hold on a
12 territory of a particular entity. I mean, I haven't
13 really thought about it in terms of defining
14 statehood as such, and you don't see it addressed
15 quite that way.

16 Q Well, in your report you rely on several
17 sources, not an international definition of
18 statehood, right?

19 A Yes.

20 Q And that's not limited to acceptance,
21 correct? It's a different analysis than whether a
22 state is accepted in the international community,
23 right?

24 A Well, the basic way in which an entity
25 becomes a state is that it becomes accepted by the

Page 123

1 territories?

2 A It mentions them -- it calls them states
3 that are detached from the Turkish Empire. And
4 one -- one mention is in relation to nationality, the
5 nationality of the persons who reside in those
6 territories. It says the states that are detached
7 from Turkey will -- will deal with -- with the
8 nationality. In fact, the people will become
9 nationals of those states and there's also a
10 provision on the -- on responsibility for the Turkish
11 national debt that would be assumed by these states
12 that are being detached. So in both those contexts
13 the entities that were being detached which are the
14 three I mentioned are referred to as states.

15 Q But it just refers to those entities
16 generally. It doesn't say that it's referring to all
17 of the entities or mention them specifically by name,
18 right?

19 A It does not mention them by name. It's
20 quite obvious that it's the -- they just say the
21 states detached and these are the ones that were
22 detached.

23 Q And -- okay. You also argue that
24 Palestine satisfies the international definition of
25 statehood, correct?

Page 125

1 existing states. That's probably -- I don't know if
2 you would call that a definition of statehood but
3 that's how an entity becomes a state.

4 Q We will turn to the acceptance part of
5 your -- of your report in a minute; but, right now, I
6 want to talk about the international definition of
7 statehood that you also discuss in your report which
8 is, for example, laid out in the Montevideo factors.
9 Do you recall that part of your report?

10 A Yes.

11 Q Okay. So what is the international
12 definition of a state according to the Montevideo
13 factors?

14 A Well, I mean, I wouldn't agree with the
15 assumption of your question that that provides the
16 definition of what entities are or are not states.
17 These are factors that are considered in determining
18 whether a particular state is going to accept a
19 punitive -- putative state as being a state. But
20 there's no indication that states necessarily have to
21 use these. But -- but to some extent they are
22 referred to by states when -- so they have some
23 relevance, but they're not definitive. That is, one
24 doesn't decide whether a particular entity is a state
25 by saying let's look at the Montevideo criteria.

32 (Pages 122 to 125)

Page 126

1 Q Okay. Well, you analyze in your report
2 whether Palestine meets the Montevideo criteria,
3 correct?

4 A I do, yes.

5 Q And we've already established that the
6 Second Circuit also analyzes the Montevideo factors
7 in deciding in its U.S. judicial opinions whether a
8 state meets those criteria, correct?

9 A Yeah. That would be an incorrect manner
10 of analysis but -- but, yes.

11 Q Okay. So you would disagree with the --
12 you would disagree with the position of U.S. courts
13 that undertake that analysis as determining -- as a
14 determining whether an entity constitutes a state?

15 A Well, it depends on which courts you're
16 talking about. The Kletter court didn't seem to need
17 those criteria to decide that Palestine was a state,
18 but you do find it in some other court decisions,
19 yes.

20 Q And you disagree with those.

21 A I would disagree with that, yes.

22 Q So under the Restatement of Foreign
23 Relations Law, which you also cite in your report,
24 correct?

25 A Yes.

Page 128

1 Q And you listed governing authority,
2 right?

3 A Yes.

4 Q And are there any other factors?

5 A That -- that's it. There is sometimes
6 said to be another factor which is called the
7 capacity to enter into international relations but
8 that's more a questionable as to whether that's a
9 separate factor or whether it's included under the
10 factor of having a -- a governing authority.

11 Q Okay. And are you aware that the
12 Restatement uses language for the third factor we
13 just mentioned of exercising governmental authority
14 and frames that as control rather than exercising
15 governmental function?

16 A Yes, yes, that's fine, determines
17 control.

18 Q So that's the -- that's the language in
19 the Montevideo Convention and in the Restatement,
20 correct?

21 A Yes.

22 (Exhibit 6 marked on the record.)

23 Q Okay. Handing you what's been marked as
24 Plaintiff's Exhibit 6, if you could just take a
25 second to review it. Let me know when you've

Page 127

1 Q What is the definition of statehood?

2 A Well, the Montevideo Convention was
3 concluded in 1933 in the Inter-American system in
4 order to protect the Latin American states from
5 having the United States come in and determine who
6 could be the governing authorities, and so they wrote
7 this to say that any time you have these particular
8 factors you have a state then that has to be
9 accepted. And they wrote in that the -- that there
10 had to be a population, that there had to be a
11 governing authority on that -- over that population
12 that -- in a particular territory.

13 So that -- and that as I say is accepted
14 as something of a guideline as the states can use but
15 if you look at state practice, you can't really
16 establish that states, you know, go through that
17 laundry list in order to determine whether they
18 accept another entity as a state.

19 Q Okay. So under the Montevideo Convention
20 and under the Restatement, you listed three factors.

21 A Uh-huh.

22 Q You listed a population, right?

23 A Yes.

24 Q You listed a territory, right?

25 A Uh-huh.

Page 129

1 finished.

2 A I mean, I can't read the entire document.

3 Q Do you recognize it?

4 A I recognize it, yeah.

5 Q What is it?

6 A It's "Restatement (Third) of Foreign
7 Relations Law of the United States Section 201."

8 Q Okay. And what is that? What is that
9 section specifically?

10 A Oh, the section deals with -- with the
11 definition of state.

12 Q Okay. And could you read for me the main
13 bolded text right under "Section 201 State Defined"
14 heading.

15 A "Under international law, a state is an
16 entity that has a defined territory and a permanent
17 population, under the control of its own government,
18 and that engages in, or has the capacity to engage
19 in, formal relations with other such entities."

20 Q And is that the same section of the
21 Restatement that you relied on in your report and in
22 analyzing whether Palestine met certain criteria of
23 statehood?

24 A Yes, with the caveat that that's not a
25 necessary analysis to determine whether Palestine is

33 (Pages 126 to 129)

Page 130

1 a state.

2 Q In your opinion is there a difference
3 between the word "control" and a government's
4 exercising "governmental functions"?

5 A Well, the government must exercise a
6 certain amount of control in order to exercise
7 function so I think the two are the same.

8 Q Okay. Focusing then on control, what is
9 meant by control in this -- in the Restatement's
10 definition or in the Montevideo Convention?

11 A I think it's not very well defined. I
12 mean, you have many entities in the world where the
13 government exercises only very vague control. Our
14 governments may have more control in some parts of
15 their territory than in other parts of their
16 territory. But that, you know, is not considered --
17 the fact that they don't have what you might call
18 complete control in the entirety of the territory
19 doesn't negate the existence of those entities as
20 states.

21 Q And in your opinion in your report you
22 state that the Palestinian Authority does exercise
23 control over the Palestinian population, right?

24 A Yes.

25 Q Okay. And -- and you said earlier that

Page 132

1 A Well, yes, but one has to take into
2 account, of course, that the territory is under
3 belligerent occupation overall which means that it
4 can't exercise the kind of control that -- that
5 governments normally exercise.

6 Q Okay. In -- in area A specifically,
7 that's what you were referring to, letters?

8 A Yeah.

9 Q In area A specifically, is that one of
10 the specific areas of the territories that the
11 Palestinian Authority exercises all basic government
12 functions?

13 A Yes.

14 Q Okay. In your report you also say that
15 the Palestinian Authority exercises government
16 functions in many ways, right?

17 A Uh-huh, uh-huh.

18 Q What are -- what are those ways? Just
19 list as many as you can think of.

20 A Well, it has a police force. It has a --
21 you know, agencies that deal with -- with sanitation.

22 Q Okay. Anything else you can think of?

23 A There are probably others but.

24 Q Okay. Well, focusing on the 2000 to 2004
25 period specifically, did the Palestinian Authority

Page 131

1 the PA has exercised control or has exercised
2 governmental function since 1994, correct?

3 A Yes.

4 Q Okay. Beginning in 1994, what sectors of
5 government did the PA begin to exercise control over?

6 A Do you mean functionally what sectors or
7 territorial? What --

8 Q Functionally.

9 A Functionally? Well, in certain parts of
10 the territory it exercised really all the basic
11 functions of government.

12 Q Okay. Which parts of the territory?

13 A Those are what then were defined in the
14 Gaza-Jericho Agreement of 1994 and the interim
15 agreement was 1995 where there's a disposition as to
16 different parts of the territory.

17 Q So which specifically are you --

18 A Well, I mean, you would have to go into
19 those to see. They use letters to label them and
20 each letter related to a certain part and portion of
21 the territory.

22 Q But it's your opinion that overall the
23 Palestinian Authority exercises sufficient control to
24 meet the requisite amount of control that's required
25 under a definition of statehood?

Page 133

1 have the ability to enact laws?

2 A Yes.

3 Q Okay. Did it have the ability to enforce
4 laws?

5 A Yes.

6 Q And had the power to tax?

7 A Yes.

8 Q You said it had the power to form a
9 police force?

10 A Yes.

11 Q Did it have the authority to arrest
12 Palestinians?

13 A Yes.

14 Q Okay. Did it have the power to set up
15 courts that would apply Palestinian law?

16 A Yes.

17 Q And, in fact, it had the authority to set
18 up an entire judicial system, right?

19 A Yes.

20 Q Okay. Did it have the power to prosecute
21 members of its population?

22 A Yes.

23 Q And that included the ability to
24 interrogate Palestinians, correct?

25 A Yes.

34 (Pages 130 to 133)

Page 134

1 Q And to detain them?
 2 A Yes.
 3 Q Did it also have the ability to conduct
 4 trials generally?
 5 A Yes.
 6 Q And can you think of -- and you said deal
 7 with sanitation. Anything else you can think of that
 8 specifically were ways in which the Palestinian
 9 Authority exercised government functions during the
 10 2000 to 2004 period?
 11 A Oh, there probably are others but I can't
 12 think of those at the moment.
 13 Q It also had in the -- based on the 1993
 14 Declaration of Principles the general oversight over
 15 education, culture, health, social welfare, tourism,
 16 that sphere of life, correct?
 17 A Yes.
 18 Q So those were all ways in which the
 19 Palestinian Authority exercised control over --
 20 A Uh-huh.
 21 Q -- the Palestinian population, right?
 22 A Yes.
 23 Q And as a governing authority, did the PA
 24 have a responsibility to exercise these government
 25 functions?

Page 135

1 A Yes.
 2 Q And did the Palestinian Authority, in
 3 fact, exercise those government functions during the
 4 2000 to 2004 timeframe?
 5 A Yes.
 6 Q And it continues to exercise them to the
 7 present day, right?
 8 A Yes.
 9 Q Now, focusing on the PLO, what -- what
 10 types of government -- what types of government
 11 action is the PLO authorized to conduct?
 12 A Well, it conducts relations with the
 13 outside world basically.
 14 Q Okay. So does it have any -- does it
 15 have any responsibilities related to the Palestinian
 16 population specifically?
 17 A Well, it has created the PA --
 18 Q Okay.
 19 A -- and then the PA exercises functions.
 20 Q Okay. Can the PLO itself enact
 21 legislation?
 22 A It doesn't directly enact legislation
 23 itself, no.
 24 Q It doesn't. Does it have the ability to?
 25 A Well, yes, it does, yes. I am not clear

Page 136

1 on exactly what areas it does or does not. For
 2 purposes -- for our purposes it doesn't really matter
 3 as between the two, so it's not something I directed
 4 my attention to in my report.
 5 Q What -- from where does the PLO drive its
 6 authority to enact legislation?
 7 A It derives authority the way any
 8 government derives authority, and when it gets you
 9 into the realm of political theory, how does that --
 10 Q Well, for example, the United States
 11 Congress acts based -- according to the United States
 12 Constitution. Is there a similar document?
 13 A Are you asking me about a document?
 14 Q Yeah.
 15 A I mean, ultimately the authority of any
 16 government comes from the people, whether the people
 17 actively want that government or whether they
 18 acquiesce in it reluctantly but that's ultimately
 19 where -- where the authority derives.
 20 Q So the Palestinian people have given the
 21 PLO the authority to enact legislation?
 22 A Yes, but, again, I mean, that authority,
 23 you know, can be expressed in simply by acquiescence
 24 but, yes.
 25 Q Okay. And why doesn't the PLO enact

Page 137

1 legislation, if it has the power?
 2 A Well, it's the PA that is -- is
 3 functioning as the -- the immediate governing
 4 authority in the West Bank and the -- so you find it.
 5 Q So has the PLO expressly delegated its
 6 power to enact legislation to the PA, for example?
 7 A Yes.
 8 Q Has it that done with respect to all of
 9 its powers of governance?
 10 A Well, it simply set it up as the
 11 governing authority, and then, you know, the PA takes
 12 the matter from there.
 13 Q Okay. Why doesn't -- why doesn't this
 14 relationship, I guess, between the PA and the PLO
 15 matter to your expert opinion?
 16 A Well, I mean, at one level you need to
 17 have a governing authority under the Montevideo
 18 criteria, and it doesn't matter exactly how that's
 19 parceled out.
 20 At another level when you have
 21 belligerent occupation, you don't need to have
 22 control at all so everything we're talking about here
 23 is not essential to Palestine being a state. I mean,
 24 there are many instances of belligerent occupation
 25 where the belligerent occupant exercises all powers,

35 (Pages 134 to 137)

Page 138

1 and the entity is still regarded as a state. If you
2 look at Kuwait during the time Iraq occupied it, the
3 entire government of Kuwait fled to outside the
4 country. They weren't there. They were not
5 exercising authority on the ground. So the --
6 this -- to say, well, you know, do they have to
7 exercise control to be a state, no, obviously not.

8 Q Okay. But in this case --

9 A But in this case there is considerable
10 exercise of control, yes.

11 Q Okay. So in your report and as you've
12 said through -- from the beginning of this
13 deposition, you take the position that the
14 determinative analysis of statehood is recognition or
15 acceptance as a state by other states in the
16 international community, right?

17 A I will use the term acceptance rather
18 than recognition. Recognition is a term that has a
19 particular significance that relates to this issue
20 but in a slightly different way, that is, states may
21 accept another entity as a state without according it
22 a diplomatic recognition.

23 If you are using recognition in your
24 question in the sense of diplomatic recognition, that
25 is a procedure that states engage in. If they do

Page 140

1 when an entity becomes a state. It's a factual issue
2 that comes out of international practice.

3 Q But we don't know what that level of
4 acceptance is, right?

5 A That's right. There's no definite, you
6 know, rule in terms of percentage of states or
7 percentage of the world's population or percentage of
8 the world's territory or anything of the sort. It's
9 just that when -- when it becomes sufficiently
10 general, then we say that an entity is accepted as a
11 state, and the fact that you -- you would have a few
12 that don't accept wouldn't be determinative in the
13 other direction if there are others that -- that
14 don't accept an entity as a state.

15 But you may have entities, of course,
16 that have accorded diplomatic recognition of the
17 entity which, as I say, doesn't mean that they regard
18 it as a state.

19 Q What does that mean practically that you
20 could have 1 nation that doesn't accept a state and
21 30 that do? What does that mean for that one state
22 that doesn't accept the -- that an entity constitutes
23 a state? What does that mean practically speaking?

24 A Practically it doesn't mean very much for
25 them. I mean --

Page 139

1 engage in it, if they recognize another entity, yes,
2 that would definitely mean they accept it as a state,
3 but they could accept it as a state without having
4 accorded diplomatic recognition. When Israel was
5 admitted to the United States, there were states that
6 voted in favor of admitting Israel as a state to the
7 United Nations even though they had not accorded
8 Israel diplomatic recognition so I'm just.

9 Q Okay. So diplomatic recognition is an
10 indication of acceptance, correct?

11 A Yes.

12 Q Okay. But it's not necessarily true that
13 acceptance requires diplomatic recognition.

14 A Correct.

15 Q Okay. What is your basis for -- what is
16 your basis for saying that the determining factor is
17 whether the international -- international community
18 accepts a state as such?

19 A Well, that's -- that's the way you see
20 states interacting, that is, once an entity gets to a
21 certain level of acceptance, that -- that is
22 considered determinative of the status of the state.
23 I mean, I suppose I base it on the practice of
24 states. There's not a document I can point to.
25 There is no like international treaty that tells you

Page 141

1 Q For who?

2 A I mean, for example, you would find
3 states that do not accept Israel as a state. There's
4 a group of states that takes that view. Does that
5 mean that Israel is not a state? No. I think there
6 is -- there is clearly sufficient generality of
7 acceptance of Israel as a state that one would say
8 the fact that you have some states that don't accept
9 Israel, that that's simply irrelevant.

10 Q Are there international scholars other
11 than yourself that do not agree that Palestine is a
12 state?

13 A Yes.

14 Q Okay. This is -- this is a complicated
15 issue on which reasonable minds can differ, correct?

16 A Well, some are less reasonable than
17 others. Those who disagree with me are less
18 reasonable.

19 Q Okay. But the disagreement is possible.

20 A Yes.

21 Q So as we've established, there is one way
22 that we know when an entity is accepted as a state
23 and that's if it's extended diplomatic recognition,
24 right?

25 A Yes.

36 (Pages 138 to 141)

Page 142

1 Q What are the other ways that we can tell
2 an entity has been accepted as a state when
3 diplomatic recognition is not present?

4 A Well, it could be an expression in some
5 kind of international document that the entity is a
6 state such as the resolution of November 29, 2012.
7 It could be a vote in favor of admitting an entity to
8 the United Nations which would be true, as I
9 mentioned, of some states that voted for Israel's
10 admission to the United Nations even though they
11 hadn't accorded diplomatic recognition. It could be
12 interaction with that entity in a way that is
13 inconsistent with a view that the entity is not a
14 state.

15 In fact, when the Declaration of
16 Principles was concluded in 2003 and in that
17 connection there were expressions on the Israeli side
18 and the Palestinian side of recognition of each
19 other, that to my mind bespoke an acceptance by
20 Israel that Palestine was a state. That was also the
21 view of Benjamin Netanyahu at the time who was the
22 member of the Knesset and opposed that declaration.
23 He criticized it on the grounds that Israel was
24 accepting Palestine as a state.

25 So you can have a variety of kinds of

Page 143

1 interaction. Or under the Declaration of Principles,
2 the negotiation of borders, the fact that Israel
3 agreed that it was going to negotiate borders with --
4 with the PLO was an acceptance that the PLO was
5 representing a state because you don't negotiate
6 borders with -- with the, you know, the Parent
7 Teacher Association. You negotiate borders with a
8 state, or you have the road map of 2003 where to my
9 mind the United States expressly stated that it
10 considered Palestine to be a state because it said
11 that within a few weeks the United States would agree
12 with -- the United States and the other major powers
13 would promote the diplomatic recognition of Palestine
14 as a state and that could not have been deposited in
15 that fashion if the United States didn't consider
16 that Palestine was -- was a state.

17 I think the confusion sometimes comes
18 because there are entities that want to encourage the
19 Palestinians and Israelis to negotiate, and so if you
20 ask at one level, they'll say, well, the statehood
21 will come out of that but just the fact of
22 encouraging them to negotiate means that there's
23 effective acceptance as a state.

24 Q Okay. So those are some of the ways --
25 some of the indications that an entity is accepted as

Page 144

1 a state even if there is no diplomatic recognition.

2 A Correct. Diplomatic recognition is
3 considered to be a discretionary matter with the
4 state so that if -- if a state, you know, doesn't
5 like things that another state does, then they will
6 withhold recognition. And here I think you find some
7 states withholding recognition of Palestine because
8 they think that's a way of pressuring it to come to
9 an arrangement with Israel.

10 Q One of the -- one of the ways that you
11 just mentioned that we know an entity is accepted as
12 a state even though there's no diplomatic recognition
13 necessarily is a resolution to be invited into the
14 UN, right?

15 A As a member state you mean. To be --
16 when you say "invited."

17 Q Those were your words but, sure, as a
18 member state.

19 A Well, it could be invited as a member
20 state or invited in some other capacity but, yes.

21 Q Okay. And, in fact, in your report and
22 earlier we've talked a bit about the 2012 General
23 Assembly resolution in which the General Assembly
24 voted on the question of Palestine, right?

25 A Yes.

Page 145

1 Q And what was -- what did the General
2 Assembly vote on in that resolution?

3 A Well, it said that the -- the mission of
4 Palestine, the observer mission, which had been in
5 existence for some time at the United Nations, was
6 the -- was the mission of a state.

7 Q Could you repeat that? Sorry.

8 A It said the mission of Palestine, the
9 observer mission, was the -- was the mission of a --
10 of a state.

11 Q Did it ultimately vote that it would
12 recognize Palestine as a nonmember observer state?

13 A Well, the term "recognize" isn't quite
14 appropriate here because it confuses with "diplomatic
15 recognition."

16 Q Okay. Did it ultimately accept Palestine
17 into the UN as a nonmember observer state?

18 A Yes.

19 Q Okay. What is a nonmember observer
20 state?

21 A It would be an entity that has observer
22 status at the United Nations and which is moreover
23 considered to be a state, although not a member of
24 the organization.

25 Q To be a member, to have formal membership

37 (Pages 142 to 145)

Page 146

1 in the UN, you have to be a state, correct?

2 A Yes.

3 Q So if being accepted as a nonmember
4 observer state is equivalent to being a state, how is
5 a nonmember observer state any different than being a
6 full member of the UN?

7 A Well, it's -- it's not membership in
8 terms of the prerogatives, although it comes rather
9 close to it. But it would mean that the entity
10 doesn't vote on resolutions in the way a member state
11 would vote on resolutions. It doesn't contribute to
12 the expenses of the organization the way a member
13 would.

14 Q Okay. And if -- if the UN wanted to
15 admit Palestine as a full member in which it only
16 does for states, it could vote to do so also,
17 correct?

18 A Yes.

19 Q And, in fact, in September of 2011,
20 the -- the government of Palestine submitted a bid to
21 the UN for full membership, correct?

22 A Yes.

23 Q And do you cite to that in your report?

24 A No, I didn't.

25 Q Why not?

Page 148

1 on hold. It may come up again; it may not come up
2 again. But given the fact that the General Assembly
3 went ahead and adopted this resolution suggests that
4 the overwhelming majority of the membership in the
5 United Nations regards Palestine as a state.

6 Q And in the meantime while the Security
7 Council put the 2011 bid on hold, the state -- the
8 government -- the Palestinian government approached
9 the General Assembly and made a bid for admission as
10 a nonmember observer state, correct?

11 A I wouldn't use the term "admission" but
12 made a request, let's say, that the General Assembly
13 adopt a resolution, you know, specifying that
14 Palestine is a state.

15 Q So the government of Palestine initiated
16 that while the Security Council put the 2011 bid on
17 hold?

18 A Yes.

19 Q Okay. And as -- as an expert on
20 international law, how do you -- how would you
21 characterize General Assembly resolutions?

22 A Well, General Assembly resolutions have a
23 certain status under the charter of the United
24 Nations. General Assembly resolutions do not make
25 law. General Assembly resolutions are often taken as

Page 147

1 A Well, I mean, that would be another way
2 in which an expression could be made of acceptance of
3 Palestine as a state but the General Assembly did it
4 in a different way and that, I think, is what is
5 determinative on the -- in -- as providing a very
6 significant expression of international acceptance of
7 Palestine. Certainly had there been acceptance into
8 membership that would have been another such
9 expression.

10 Q What happened with the September, 2011,
11 bid for membership?

12 A It was referred to the Security Council,
13 and to date the Security Council has not taken any
14 action. It hasn't voted against; it hasn't voted in
15 favor.

16 Q And is that a significant expression of
17 international views on Palestine similar to what you
18 said was significant expression in the 2012
19 resolution?

20 A Well, if you had some expression from the
21 Security Council that it was refusing to act because
22 it didn't consider the entity to be a state, then
23 that would be relevant. Here you have not had any
24 such expression by the Security Council. The
25 Security Council has merely, you know, put the matter

Page 149

1 an expression of the views of the international
2 community on a particular subject, and in particular
3 when a state votes a particular way on a resolution,
4 that's an indication of its view on an issue.

5 Q But it's not binding law in any way.

6 A The resolution itself is not binding law
7 except to the extent that this resolution does relate
8 to the status of the Palestine mission at the UN so
9 in that sense it is binding, that that makes the
10 observer mission at the UN the observer mission of a
11 state.

12 Q So you're saying it's binding; you're
13 saying General Assembly resolutions are binding on
14 the UN?

15 A Yes.

16 Q But other than that they are not binding?

17 A Well, the General Assembly can't create
18 law. It can't say, you know, we consider such and
19 such to be required under international law.

20 Q On the other hand the Security Council
21 has different authority within the UN?

22 A Well, the Security Council doesn't make
23 law but it -- it has a different realm of operation,
24 in particular relating to war and peace. With regard
25 to admission of members, at least the way it's

38 (Pages 146 to 149)

Page 150

1 presently construed, they both have a role, a role
2 that -- that is determinative so, for example, when
3 the General Assembly admits a state as a member, you
4 know, that is determinative as to the status of that
5 entity within the organization.

6 Q Okay. So can the UN, whether it be
7 through the General Assembly or the Security Council,
8 make law in any way outside of the realm of for
9 itself?

10 A They don't make law. I mean, here we are
11 dealing with an issue of fact. It's a question of
12 whether Palestine is accepted as a state. And when
13 you get a large number, whatever the number was on
14 that resolution, voting in the affirmative, it means
15 that those -- that that number of states are saying
16 that they consider Palestine to be a state so you
17 don't really need to talk about --

18 Q But it's not binding, for example -- the
19 number that voted for it, that -- the fact that that
20 was the majority and that resolution passed, it's not
21 binding on any state that voted against it, right?

22 A Well, it's not binding on the states that
23 voted against it, but when you have an overwhelming
24 expression of sentiment in favor of an entity being a
25 state, then it does -- it becomes a state. And you

Page 152

1 Q The overwhelming number of states that
2 voted to accept Palestine voted to accept Palestine
3 as a nonmember observer state, correct?

4 A Yes.

5 Q Okay. And we have the 2011 bid that is
6 pending before the Security Council, correct?

7 A Uh-huh.

8 Q Have there been any other bids for
9 membership to the UN made by the government of
10 Palestine prior to September, 2011?

11 A Not to the United Nations but there have
12 been to specialized agencies of the United Nations
13 which also requires statehood as a criterion.

14 Q Okay. And what was the -- first of all,
15 did you cite those in your report?

16 A I don't know if I mentioned that, but I
17 don't think I mentioned the fact that Palestine
18 applied to -- to UNESCO for membership, that's a
19 specialized agency, and that it was admitted in I
20 believe 2011 and that too is an organization that
21 requires statehood as a condition of membership.

22 Q That was in 2011?

23 A Yes.

24 Q And what is that organization?

25 A The UN Economic, Social, and Cultural

Page 151

1 have here --

2 Q How so?

3 A Well, that's how an entity becomes a
4 state is that other states consider it to be so. And
5 here you have not only the number that voted in favor
6 of this resolution, you've got others that have
7 accorded diplomatic recognition that didn't vote in
8 favor. When you add it all together, you've got
9 about some 160 states that have -- have in a formal
10 way expressed their acceptance of Palestine and
11 that's out of 190 or so in the international
12 community.

13 Q And they expressed their acceptance of
14 Palestine as a nonmember observer state, right?

15 A Well, but the critical point is they
16 accepted it as a state.

17 Q Professor Quigley, when I ask a yes or no
18 question, could you please answer it "yes" or "no"?

19 A What is the yes or no question?

20 Q The question is they -- that number of
21 states that you just cited to, 160, they voted to
22 accept Palestine as a nonmember observer state,
23 right?

24 A It wouldn't be 160. I was adding another
25 group of states.

Page 153

1 Organization, it's a specialized agency of the United
2 Nations.

3 Q Okay. And how did the U.S. vote on that
4 resolution?

5 A The U.S., the U.S. voted against.

6 Q Going back to the 2012 General Assembly
7 resolution, how did the U.S. vote on that resolution?

8 A In the negative.

9 Q Okay. How many other states rejected it?

10 A Let's see, nine, nine total.

11 Q And how many states abstained from
12 voting?

13 A 41.

14 Q Okay. So is it fair to say that at least
15 50 states in the UN voted against accepting Palestine
16 as a nonmember observer state?

17 A Yes, but that doesn't mean they don't
18 consider Palestine to be a state. Many of them were
19 of the opinion that they thought they would encourage
20 negotiations if they -- if Palestine were not given
21 this status. So the fact that they abstained or
22 voted in the negative doesn't necessarily mean that
23 they don't consider Palestine to be a state.

24 Q Why is that?

25 A Well, it just -- states have their own

39 (Pages 150 to 153)

Page 154

1 reasons for voting on these things. And some of them
2 expressed the view that the -- that they thought it
3 would put more pressure on Palestine to come to terms
4 with Israel if it were not accorded this status at
5 the United Nations so their vote was not based on
6 a -- on their view that Palestine was not a state.

7 Q Given all of these other political
8 motivations or other reasons for voting on the
9 resolutions, the resolution itself doesn't actually
10 tell us whether or not Palestine is accepted as a
11 state, right?

12 A I disagree with that. I mean, it does
13 state as a fact that Palestine is a state. If the
14 observer mission is the observer mission of a state,
15 then they are saying that Palestine is a state.

16 Q Well, it does actually say that Palestine
17 is a nonmember observer state, correct?

18 A Yes.

19 Q So is your previous answer affected in
20 any way?

21 A No. I mean, that's what they were
22 voting. You have to have regard for the way in which
23 this arose. I mean, you have a mission of Palestine
24 at the United Nations. It's called an observer
25 mission. It's an observer so it has the status of

Page 156

1 observer status is the same as state status in the
2 UN.

3 A Well --

4 MR O'TOOLE: I am going to
5 object. The question was based on not
6 the language of the resolution.

7 A You said "nonmember observer status."
8 It's not "member state status" so we are going around
9 in this --

10 Q So you are saying there is no difference
11 between a nonmember observer state status and a full
12 state status in the UN.

13 A Well, I don't accept the premise of your
14 question. I don't know what you mean by full -- what
15 was full status? Do you mean member status? It
16 certainly isn't considering it to be a member of the
17 organization.

18 Q What in a resolution that votes on
19 whether an entity is a nonmember observer state says
20 that that nonmember observer state is recognized as a
21 state?

22 A Well, again, I have to object to the term
23 of "recognize" in this context, but if the
24 organization is saying -- at least those who voted in
25 favor are saying that -- that the status of Palestine

Page 155

1 observer. But up until the time of this resolution
2 there hadn't been anything formal that indicated of
3 what Palestine is an observer. Is it an observer
4 of -- of a nongovernmental organization? Is it an
5 observer of a state? And here they are making the
6 specification that the observer mission is the
7 observer mission of a state.

8 Q Okay. So it wasn't voting to decide that
9 Palestine should be accepted as a state, right?

10 A Well, they are making a factual statement
11 that Palestine is a state.

12 Q They are making a factual statement that
13 Palestine is a nonmember observer state, right?

14 A Yes.

15 Q Where --

16 A It is a state, yeah.

17 Q Where in the resolution does it say that?

18 A "Decides to accord to Palestine nonmember
19 observer state status."

20 Q Okay. And in your opinion that's the
21 same as a state status?

22 A It says "state status," the word
23 "state" --

24 Q But it is qualified by "nonmember
25 observer status," so I am asking you if a nonmember

Page 157

1 is that of an observer state, they are saying that it
2 is a state.

3 Q Okay. So in your opinion the
4 qualification "nonmember observer" has no meaning.

5 A It does not derogate from the fact they
6 are making a factual statement that they consider
7 Palestine to --

8 Q That's not what I am asking you. I am
9 asking does the qualifier "nonmember observer" in
10 this resolution have any meaning to you? "Yes" or
11 "no."

12 A Well, it has meaning in terms of what
13 Palestine's observer mission is at the United
14 Nations. It doesn't have any significance with
15 regard to a statement about Palestine being a state.

16 Q Okay. By the way -- we did that one
17 already. Strike that.

18 You mentioned of the 50 states that voted
19 to either reject or to abstain from voting on that
20 resolution, that they may have had political reasons
21 for those rejections or abstentions, correct?

22 A Yes.

23 Q Does that mean necessarily that those
24 states accept that Palestine is a state?

25 A Well, by their abstention or negative

40 (Pages 154 to 157)

Page 158

1 vote, you -- the abstention or negative vote does not
2 indicate an acceptance of Palestine as a state,
3 though some of those states accept Palestine in other
4 ways, but the vote on the vote itself, the negative
5 vote or the abstention, doesn't so indicate.

6 Q Okay. Another way you mentioned that a
7 state that has not extended diplomatic recognition
8 can indicate that it accepts an entity as a state is
9 through actions that are inconsistent with not
10 recognizing that entity as a state, right?

11 A Uh-huh, uh-huh.

12 Q And specifically you mentioned with
13 respect to the United States the 2003 road map,
14 correct?

15 A Yes.

16 Q Okay. What is this 2003 road map?

17 A Well, it's a document that was drafted by
18 the major powers as to steps that should be taken
19 that could resolve the overall conflict,
20 Israeli-Palestinian Conflict.

21 Q And you say this document -- in this
22 document the United States accepts that Palestine is
23 a state.

24 A Yes.

25 Q Okay. Where in the document do you?

Page 160

1 state because Palestine wasn't going to kind of
2 change anything. It wasn't going to become anything
3 different within -- between the end of April and June
4 of 2003.

5 Q Okay. But this entire document, this
6 entire road map, envisions a series of possibilities,
7 right? It's creating a road map.

8 A Yes.

9 Q A possible road map.

10 A Uh-huh.

11 Q And as you say in your report, it
12 "envisions possibility" of establishing a Palestinian
13 state.

14 A I wouldn't say of establishing a
15 Palestinian state. I would say of promoting
16 diplomatic recognition of Palestine as a state.

17 Q Okay. So if -- if it envisions -- if
18 this road map envisions the possibility of promoting
19 diplomatic recognition of Palestine, how does that
20 mean that it is currently in that statement accepting
21 that Palestine is a state?

22 A Well, they were saying that by -- this is
23 the end of April of 2003. They were saying that
24 we're prepared if -- if certain things happen
25 between -- over the next few weeks, we're prepared to

Page 159

1 A Well, it doesn't say it in so many words,
2 but the document talks about phases that shall be
3 carried through in order to move in the direction.
4 And the first phase, this was the end of April, 2003,
5 it was concluded, and the first phase was to be
6 certain measures that would reduce tension between
7 the parties.

8 The second phase was that -- that was to
9 begin within a few weeks after the beginning of the
10 first phase that -- that quartet members, quartet is
11 the overall group enacting this doc -- or signing
12 onto this document, that they would promote
13 international recognition of Palestinian state
14 including possibly UN membership.

15 So they were formulating a document in
16 April of 2003 that contemplated that by June of 2003,
17 the United States along with Russia, all the European
18 powers, would be asking all states of the world to
19 recognize Palestine as a state. So as of April of
20 2003, they are saying we're prepared as of June,
21 2003, to be encouraging all states in the world to --
22 to recognize, to accord diplomatic recognition to
23 Palestine as a state.

24 And it seems to me they could not have
25 done that unless they thought that Palestine was a

Page 161

1 encourage all states to accord diplomatic recognition
2 to Palestine. I don't see how they could have --
3 have said that if they didn't think that what they
4 would be encouraging diplomatic recognition of was
5 not a state.

6 Q Well, as you just said, that was
7 dependent on certain contingent --

8 A Uh-huh.

9 Q -- if clauses, correct?

10 A Yes.

11 Q Okay.

12 A But those if clauses didn't relate to
13 Palestine status.

14 Q Okay. What did they relate to?

15 A This related to reduction of violence.

16 Q Okay. So the text of the 2003 road map
17 doesn't expressly recognize -- doesn't expressly
18 accept Palestine as a state; is that right?

19 A That would be correct.

20 Q Okay. Similarly you said the 1993
21 Declaration of Principles between Israel and the
22 government, the Palestinian government, was another
23 indication that Israel was impliedly recognizing or
24 impliedly accepting the state of Palestine, right?

25 A Yes.

41 (Pages 158 to 161)

Page 162

1 Q And would the same possible reasoning
2 apply to that scenario that we just went through with
3 the 2003 road map?

4 A I'm sorry. I'm afraid I don't follow.

5 Q Just because the Israeli government says
6 it is possible in the future that Palestine may be
7 accepted as a state, does that mean that at that
8 moment in the present Israel is accepting Palestine
9 as a state?

10 A Well, the road -- the declaration itself
11 doesn't say that Israel is perhaps in the future
12 going to accept Palestine as a state. The
13 Declaration of Principles doesn't address the
14 question of statehood. It's just that by entering
15 into an arrangement where you would agree to discuss
16 borders and where you have the subsidiary documents
17 that were exchanged in September of 2003 of mutual
18 recognition, you have -- this was, as I say,
19 Mr. Netanyahu's view, you have an acceptance of each
20 other as being a state.

21 Q But that document, as you just said,
22 doesn't even address the question of Palestinian
23 statehood, correct?

24 A It does not and in particular it doesn't
25 say that statehood is one of the things to be

Page 164

1 Q They were encouraging the parties to try
2 to resolve decades of fighting and violence and
3 struggle, correct?

4 A Yes. But not to resolve the question of
5 statehood, yeah.

6 Q Okay. What other sources do you cite in
7 your report to support your assertion that the United
8 States is part of the international community that
9 accepts Palestine as a state?

10 A Well, for the United States there would
11 be the road map. There would be the encouragement
12 of --

13 Q Other than what we've just discussed.

14 A Agreeing on borders -- I'm -- state the
15 question again, please.

16 Q Other than what we've just discussed what
17 sources do you cite in your report to support your
18 assertion that you -- the United States is part of
19 the international community that accepts Palestine as
20 a state?

21 A Well, I also mention the situation back
22 in 1932 when the Secretary of State of the United
23 States expressed to Britain the view of the United
24 States that Palestine is a state.

25 Q Did you cite to any sources more recent

Page 163

1 determined in the negotiations between the parties,
2 that is, that was not one of the agenda items. It
3 was -- I think he was saying -- it was presumed that
4 the two entities would be states.

5 Q Presumed by who?

6 A By both parties.

7 Q Okay. But was it presumed by the United
8 States?

9 A The United States was not quite a
10 signatory but -- but -- well, actually did sign on as
11 something of a -- you might say a witness to the
12 document. So to that extent I suppose you would say
13 the United States as well was accepting the notion
14 that Palestine was a state.

15 Q Or we're presuming that the United States
16 accepted it through its role as a witness?

17 A Yes, that it was signing onto a document
18 that presumed statehood.

19 Q It didn't sign that document, did it?

20 A No. It signed as kind of, oh, United
21 States and I think Russia and government. Some
22 others signed it as kind of -- it was a bit more than
23 witnesses. It was more as that they were all
24 encouraging the parties to do what was specified in
25 the document.

Page 165

1 than 1932 where any member or any security who was --
2 any security member of the United States said that
3 Palestine was a state?

4 A When you say "any security member" --

5 Q What term did you use? Who was --

6 A The Secretary of State.

7 Q Secretary of State, did you cite to any
8 more recent document or any other statement by any
9 security of state -- Secretary of State, Secretary of
10 State, sorry, that made any type of declaration on
11 that Palestine was a state? Did you cite any such
12 sources in your report?

13 A No. I don't think there have been others
14 since then. I mean, it's the kind of thing that
15 comes into -- that occurs only when there's an
16 occasion that calls for it, and in the 1932 there was
17 an occasion because it related to tariffs that might
18 have been charged on United States' goods going into
19 Britain and so there was a reason that there needed
20 to be an expression by the United States.

21 Q So --

22 A So the fact that the next Secretary of
23 State didn't say anything comparable doesn't really
24 negate what was said by the earlier Secretary of
25 State.

42 (Pages 162 to 165)

Page 166

1 Q So it's your opinion that no member --
2 strike that.

3 It's your opinion there has been no
4 occasion since 1932 for a member of the Executive
5 Branch of the United States government to speak on
6 whether Palestine is a state?

7 A Well, since 1932 that particular -- the
8 occasion for stating it hasn't arisen so --

9 Q So the answer is "no"?

10 A But -- but I -- I would really have to
11 check before answering that one way or the other
12 because --

13 Q You didn't check before writing this
14 report?

15 A Well, there might be others. I mean,
16 there's a huge amount of diplomatic intercourse that
17 goes on, you know, at the UN but let -- I will say I
18 haven't found any that would -- would be in that
19 direction.

20 Q And you didn't cite any in your report.

21 A I did not, no.

22 Q Okay. Are there any other sources that
23 you cite in your report to support the conclusion
24 that the United States is part of the international
25 community that accepts Palestine as a state?

Page 168

1 passport, did the United States declare that it
2 recognized Palestine as a state?

3 A I think so. I mean, if I come to the
4 border of the United States and I have a passport,
5 you know, signed by the Beatles, I mean, they are not
6 going to let me in.

7 Q Okay. That was in 1923, right?

8 A This was all during the period following
9 1923.

10 Q Do you know how recently the United
11 States has accepted any Palestinian passport?

12 A Let's see, well, passports would have
13 been issued for residents of Gaza after 1948 by a
14 governing authority that was under the belligerent
15 occupation of Egypt and those would have been
16 accepted. Those were issued in the name of
17 Palestine, but the governing authority by way of
18 belligerent occupation was Egypt but those would have
19 been accepted by the United States.

20 Q Do you know they were accepted?

21 A Yes, yeah.

22 Q 1948?

23 A Yeah, up until 1967.

24 Q 1967 is when the United States started
25 rejecting Palestine passports?

Page 167

1 A Well, going back to the 1920s, the United
2 States was not part to the Treaty of Lausanne, but it
3 accepted the disposition that was found in the Treaty
4 of Lausanne, in particular with issues of -- of
5 citizenship, that there was a Palestine citizenship,
6 and people who had Palestine passports were allowed
7 to enter the United States on Palestine passports
8 so -- so there was acceptance by the United States in
9 that way.

10 Q That was the 1923 treaty?

11 A Yes.

12 Q And the United States wasn't party to
13 that treaty, right?

14 A It wasn't a party, but I'm saying that it
15 accepted the disposition that you found in the 1923
16 treaty.

17 Q How so?

18 A By its practice because one of the
19 provisions of the Treaty of Lausanne, as I mentioned,
20 was that there would be a Palestine nationality, and
21 the government of Palestine began to issue passports
22 in the name of Palestine and if someone came to --
23 arrived at New York with one of these passports, you
24 know, they were allowed in.

25 Q Okay. By accepting a nationality's

Page 169

1 A No. It would be when they stopped being
2 issued. I don't -- I will acknowledge I don't know
3 for sure how late those were accepted or whether they
4 are still being accepted.

5 Q Okay. Other than what we've already
6 discussed, so there's no need to repeat the sources
7 we've already gone through, do you cite any other
8 authority in your report to support your position
9 that the United States accepts Palestine as a state?

10 A I think we've gone over the -- those
11 instances that I cite.

12 MS. MACHNES: Okay. I
13 think we can take a break now.

14 (Recess taken.)

15 Q Professor Quigley, other than Palestine
16 are you aware of any other entities that have a
17 nonmember observer state status in the United
18 Nations?

19 A The Vatican.

20 Q That's the Holy See, right?

21 A Yes.

22 Q Does the fact that the Holy See has
23 nonmember observer state status mean that the
24 international community recognized the Holy See as a
25 state -- or accepts?

43 (Pages 166 to 169)

Page 170

1 A Thank you.
 2 Q Accepts the Holy See as a state?
 3 A Yes.
 4 Q So you believe that the international
 5 community accepts the Holy See as a state?
 6 A Yes.
 7 Q Are you aware of any other entities that
 8 have nonmember observer state status?
 9 A No.
 10 Q And is that in your report?
 11 A I don't think I mentioned that -- these
 12 facts in the report.
 13 Q Okay. I mean, specifically the number of
 14 entities -- or number of entities in the UN that have
 15 nonmember observer status.
 16 A No. I didn't consider that relevant.
 17 Q Okay. It's your position that -- that
 18 acceptance of a state as being a state is the
 19 determinative factor based on state practice, right?
 20 A Yes.
 21 Q And you say that the practice of states
 22 is the most important way that we can tell that
 23 acceptance is the determinative analysis of statehood
 24 under international law, right?
 25 A Yes.

Page 171

1 Q And that the practice of states is more
 2 important than the Montevideo factors, for example?
 3 A Well, the Montevideo factors are factors
 4 that states can take into account, but it's
 5 ultimately states that take those into account.
 6 Q Okay. And that's your opinion, right?
 7 A Yes.
 8 Q Is that -- is that an established way of
 9 prioritizing the analysis of statehood under
 10 international law?
 11 A I think it is, yes.
 12 Q How do you -- based on what?
 13 A That's what you find, you know, others
 14 saying. Some may differ about how extensive the
 15 practice has to be but this is the analysis that you
 16 generally find.
 17 Q Who are the others that you are referring
 18 to?
 19 A Oh, there would be James Crawford who has
 20 written a book on states that would go through this.
 21 He probably has a higher standard than I do for
 22 what -- how much the acceptance has to be, but it's a
 23 matter of degree. It's not a huge difference.
 24 Q So you're basing the pri -- so you're
 25 basing this prioritization of state practice over

Page 172

1 other types of analyses on other scholars; is that
 2 what you're saying?
 3 A Well, I base it on my analysis of how
 4 states actually operate and on how other scholars
 5 analyze how states operate.
 6 Q Did you consider other scholars that
 7 disagree with your prioritization of how to analyze
 8 statehood?
 9 A I've seen some. I haven't analyzed -- or
 10 seen all of them so I don't know the totality of
 11 them.
 12 Q Did you cite to any in your report?
 13 A I didn't, no.
 14 Q Okay. Other than James Crawford do you
 15 have any -- can you list any others?
 16 A There really haven't been others who have
 17 done extensive analysis. I mean, you find lawyers
 18 that have stated an opinion on this issue but -- but
 19 not many that have done what I would call extensive
 20 analysis.
 21 Q Where have lawyers stated their opinion?
 22 A I've seen articles by authors whose names
 23 I don't recall.
 24 Q Okay. And those aren't cited in your
 25 report, right?

Page 173

1 A No.
 2 Q So earlier we discussed all of the
 3 sources that you cited to support your assertion that
 4 the United States implicitly recognizes or accepts
 5 Palestine as a state, right?
 6 A Yes.
 7 Q And coming to this conclusion did you
 8 consider the modern position of the United States
 9 Executive Branch on whether Palestine is a state?
 10 A Yes.
 11 Q Do you cite to that in your report?
 12 A No.
 13 Q So what other sources that you didn't
 14 cite in your report from the Executive Branch of the
 15 United States tell you that the United States tacitly
 16 recognizes or accepts Palestine as a state?
 17 A When I say I haven't cited, I mean, we
 18 did talk about the road map which to me is an
 19 indication by the United States that it does accept
 20 Palestine as a state and that's -- that's very
 21 recent. That's within the last 10 years.
 22 Q And we established that that document
 23 contemplated the possibility of Palestine being
 24 accepted as a state. It did not explicitly accept
 25 Palestine as a state, right?

44 (Pages 170 to 173)

Page 174

1 A It impliantly accepted Palestine as a
2 state and looked to the future to promoting
3 diplomatic recognition of what was assumed in the
4 document to be a state, namely, Palestine.

5 Q Okay. So we established that it's your
6 opinion that document impliantly accepts Palestine as
7 a state.

8 A That's right.

9 Q Other than that did you consider other
10 sources from the Executive Branch of the United
11 States that aren't in your report and that we haven't
12 already discussed where the Executive Branch of the
13 United States declares its position on Palestine as
14 being a state?

15 A The only one I can think of would be the
16 statement made by the U.S. Representative after the
17 vote in the General Assembly where she said Palestine
18 was not a state or that -- she didn't say Palestine
19 was not a state. She said the resolution didn't
20 indicate that. That was her view. But that's the
21 only one I can think of and I did not cite that.

22 Q Do you know who -- do you know who that
23 U.S. Representative was?

24 A Ms. Rice.

25 Q Okay. And she made that statement after

Page 176

1 doesn't necessarily mean that the United States
2 doesn't accept Palestine as a state.

3 Q Okay. So it's your position that the
4 United States' actions are consistent only with
5 accepting that Palestine is a state?

6 A Yes.

7 Q Okay. And it's your opinion that a U.S.
8 Representative's expression as recently as 2012 that
9 Palestine was not accepted as a state is not
10 important enough to include in your report about
11 whether Palestine is a state for an expert report
12 that is pending before a United States court?

13 A Well, I mean, the issue is the acceptance
14 by states generally.

15 Q That's the issue for --

16 A The fact that you have an expression by
17 the United States, whereas, I say that expression is
18 inconsistent with the practice, I mean, I don't know,
19 you know, what -- you know, whether you can take that
20 as any -- anything of great moment.

21 Q Okay. I think you also just said that
22 U.S. courts are supposed to decide under
23 international law; is that correct?

24 A Yes, uh-huh.

25 Q Do you recognize the difference between

Page 175

1 the 2012 UN General Assembly resolution?

2 A Yes, uh-huh.

3 Q Why didn't you cite that statement in
4 your report?

5 A Because it's so overwhelming what you get
6 from the way this was handled at the General
7 Assembly, that that, you know, simply isn't
8 significant.

9 Q Well, you are aware that this case is
10 pending before a United States court, right?

11 A Yes.

12 Q And that the United States is governed by
13 its own positions on these things, right?

14 A Yes. But a court is supposed to decide
15 an issue of this on the basis of -- of international
16 law. I mean, it's not supposed to decide solely
17 based on what the U.S. government says and what --
18 what a particular official says on a particular day,
19 you know, isn't necessarily definitive as to whether
20 or not the United States accepts Palestine as a
21 state.

22 I mean, if by its practice if what it
23 does, you know, is -- is consistent only with a view
24 that Palestine is a state but then somebody gets up
25 and says, oh, it's not a state, you know, that

Page 177

1 international law and domestic law?

2 A Yes.

3 Q And you think that U.S. courts should be
4 guided by international law --

5 A Yes.

6 Q -- as opposed to domestic law?

7 A There's no opposed domestic law but
8 international law has been found by the U.S. Supreme
9 Court to be something to be applied by the courts of
10 the United States. It goes back to the Paquete
11 Habana case in the early 20th Century in the U.S.
12 Supreme Court. It's been the position of the U.S.
13 Supreme Court from the beginning of the republic.

14 Q What happens if U.S. domestic law
15 conflicts with international law?

16 A Well, I mean, there isn't any conflicting
17 domestic law on -- on this point. But the -- the
18 courts are supposed to apply international law and,
19 in fact, in that -- the case that I mentioned in the
20 U.S. Supreme Court there was conflicting U.S. law,
21 and the court said that it was overridden by
22 international law.

23 Q Okay. In -- in your report did you
24 consider the position of the United States
25 Legislative Branch on whether the United States

45 (Pages 174 to 177)

Page 178

1 accepts Palestine as a state?

2 A I did not.

3 Q Okay. Has -- do you know whether
4 Congress has ever declared that Palestine is accepted
5 by the United States as a state?

6 A I don't know if Congress has ever
7 addressed that question in a resolution. If it has,
8 I am not aware of it.

9 Q In writing your report other than the
10 couple of cases that we discussed already from the --
11 from 1925 and from 1953, did you consider the
12 position of the United States judiciary when you were
13 coming to the conclusion --

14 A Well, there were a couple of cases and
15 you mentioned one of them where a federal court has
16 said that Palestine is not a state and I simply
17 considered those decisions to be incorrect and so I
18 didn't mention them in my report.

19 Q Why didn't you mention them in your
20 report if --

21 A I was mentioning what I thought was
22 relevant to the question of whether Palestine is a
23 state, and the fact that you have some expression to
24 the contrary, you know, doesn't derogate from the
25 evidence that I think shows that Palestine is a

Page 180

1 A I did not.

2 Q Okay. Are you familiar with the case
3 Klinghoffer v. S.N.C.?

4 A Not the details of it, I'm afraid.

5 Q Well, I will represent to you that that
6 is a case that came out of the Second Circuit Court
7 of Appeals.

8 A Uh-huh.

9 Q And I take it you did not rely on that
10 case in writing your report?

11 A I did not, no.

12 Q And in that case the Second Circuit
13 adopts the Restatement definition of statehood; would
14 that surprise you?

15 A It doesn't surprise me. I mean, I don't
16 think it's the correct approach but.

17 Q Why doesn't it surprise you?

18 A Well, I mean, I often disagree with
19 decisions of court. I mean, often they take a line
20 of reasoning that -- that may seem easy and seem --
21 you know, may have been proposed to them by counsel
22 but which in -- in the total picture should not have
23 been the line of analysis.

24 Q Okay. So even if you had to distinguish
25 this case, given that you disagree with it, you

Page 179

1 state.

2 Q So you only cited to sources when they
3 supported the position that you were taking in your
4 report?

5 A No. I cited practice. I cited the
6 practice of states, and the practice of states is
7 overwhelmingly in that direction.

8 Q You also cited a U.S. -- you also cited a
9 court decision from 1925 because that supported your
10 decision. I'm asking if you cited court cases that
11 were perhaps contrary to your position.

12 A No, I didn't. I mean, I recognize that
13 there are some decisions that are contrary, and they
14 are there for anybody to look at if they -- if they
15 want to take them into account, but to my mind they
16 were not very well reasoned and didn't figure into my
17 forming my opinion that Palestine is a state.

18 I mean, I accept that there are other --
19 as you've indicated other people who have written to
20 the contrary. I didn't go through a laundry list of
21 people that have written to the contrary.

22 Q Did you direct the readers of your report
23 to any of the United States court decisions that you
24 think were decided incorrectly but that you say are
25 out there for anybody to read?

Page 181

1 didn't find it important enough to include in your
2 report.

3 A That's correct. There -- as you
4 mentioned, there are expressions of -- of the opinion
5 that Palestine is not a state one can easily find and
6 anyone who has access to Lexis or Westlaw can find
7 them from the U.S. courts, but I didn't find them to
8 be persuasive on the issue of whether Palestine is a
9 state.

10 Q Well, you are aware that as a U.S.
11 qualified lawyer, you understand what binding law is,
12 correct?

13 A I'm being asked for an opinion. I'm
14 not --

15 Q I am asking you separately from that as a
16 U.S. qualified lawyer, you understand that U.S.
17 courts are bound by precedent under the stare decisis
18 we have had in our court system forever, right?

19 A Yes, until they change them, yes.

20 Q "Until they change them," what does that
21 mean?

22 A Well, stare decisis doesn't mean the
23 courts can never change the law.

24 Q Okay. Right. So currently this case is
25 binding law, you didn't think it was important enough

46 (Pages 178 to 181)

Page 182

1 to cite even if it required distinguishing?

2 A I mean, I thought it was not relevant to
3 my coming to an opinion as to Palestine's statehood.

4 Q Are you familiar with a case call Knox v.
5 Palestine -- Palestine Libration Organization?

6 A I've heard of it, but I don't know
7 anything about it.

8 Q Okay. I will represent to you that this
9 is a case from the Southern District of New York that
10 was decided in 2004. And I take it you did not rely
11 on that case in writing your expert report in this
12 case, correct?

13 A Correct.

14 Q Are you aware that in that case the court
15 expressly disavowed your opinion on the issue of
16 Palestinian statehood?

17 A I think someone informed me that there
18 was mention of me in that decision, but I haven't
19 looked at it in detail.

20 Q Do you know how the court came to -- came
21 upon your opinion regarding Palestine in the first
22 instance?

23 A I published articles.

24 Q But that wasn't one of the cases that you
25 were an expert for that you --

Page 184

1 or about what -- how the court should decide issues
2 of international law except to the extent I am
3 providing a factual basis for them to apply the
4 principles of international law.

5 And if one looks at the international
6 community, one finds this acceptance of Palestine and
7 I think that's what's key and if I am asked to give
8 an opinion that, you know, isn't a book length where
9 I might discuss other people that disagree, you know,
10 I think what I've written is adequate.

11 Q You don't think in providing the
12 framework for a court to apply your factual analysis,
13 as you say it, it's important to point out binding
14 law that takes the opposite position of your opinion?

15 A Well, the fact that they've taken a
16 different approach in the past, you know, isn't
17 really relevant to the approach that I think should
18 be taken. My report is oriented towards what -- the
19 approach that I think needs to be taken.

20 Q Okay. Let me read you -- I am going to
21 read you another quote from the Knox case; and,
22 again, I want you to tell me if you disagree with
23 this statement. "Even absent any intervention from
24 the Executive Branch, the Court notes that it's
25 granting the im" -- "that its granting the immunities

Page 183

1 A No.

2 Q Okay. I am going to read you a statement
3 from the court's opinion in Knox, and I want you to
4 tell me if you disagree with it. "The Court
5 disagrees with the Defendants and Professor Quigley
6 and is persuaded instead by the weight of judicial
7 and scholarly authority pronouncing that for
8 statehood purposes the PA and PLO do not meet the
9 control requirement." Do you disagree with that
10 statement?

11 A I disagree with the court's, yes,
12 conclusion, yes.

13 Q Okay. And despite the fact that you knew
14 there was this court opinion out there that expressly
15 disavowed your opinion, you didn't think it was
16 important enough to cite in your report, right?

17 A I didn't think it was relevant to my
18 coming to a conclusion as to whether Palestine is a
19 state.

20 Q And you didn't think it was important
21 when you were providing an expert report for a case
22 that is pending in a U.S. court.

23 A I'm -- I'm giving an opinion about facts,
24 about the facts in the international community. What
25 I'm not giving an opinion about is international law

Page 185

1 Defendants seek would, in fact, conflict with
2 declared U.S. public policy regarding the Defendants.
3 Though the PLO has declared Palestine's statehood and
4 several other nations have apparently recognized that
5 status, the United States has yet to recognize a
6 Palestinian state."

7 Did you take that into consideration when
8 you were writing your report?

9 A Well, the statement is the United States
10 has yet to recognize Palestine. That means
11 diplomatic recognition. That's not the totality of
12 the question of statehood.

13 Q So you think the Knox case is consistent
14 with your --

15 A Well, it's clear the United States has
16 not granted diplomatic recognition to Palestine.
17 That's all that's being said there. As a matter of
18 fact, I don't disagree with that, but I don't think I
19 needed to -- to say that.

20 Q And, again, even if -- even if it's your
21 position that the court in Knox is saying something
22 different that -- that touches on the difference
23 between acceptance and diplomatic recognition, even
24 if we take that -- even if we accept that, you didn't
25 think that this case was important enough to include

47 (Pages 182 to 185)

Page 186

1 in your expert report when it's binding U.S. law?

2 A I mean, if the court is saying it's going
3 to find that Palestine is a state because the United
4 States does accord it diplomatic recognition, you
5 know, that doesn't really make much sense because
6 that's not definitive on the view of the United
7 States. Maybe the court is -- has a misunderstanding
8 of the significance of diplomatic recognition. I
9 mean, I can't, you know -- I didn't in my report go
10 over all of the bad analysis that you find from --
11 from -- from courts or from other writers.

12 Q Well, you know that -- you know that
13 courts are bound by their own precedent, right?
14 We've established that, right?

15 MR O'TOOLE: I am going to
16 object. Which courts? Are we talking
17 about Southern District of New York?

18 Q We know the Southern District of New York
19 is bound by its own precedents.

20 MR O'TOOLE: So one judge
21 binds all of them? I want to make sure
22 the question accurately --

23 Q You can answer my question.

24 MR O'TOOLE: -- represents
25 the facts.

Page 188

1 Palestine by the international community as a state.

2 Q Okay. Are you -- last one, I promise,
3 are you familiar with a case called Ungar versus the
4 Palestine Libration Organization?

5 A Yes.

6 Q And that was a case decided by the First
7 Circuit Court of Appeals, correct?

8 A My recollection is vague on which
9 circuit.

10 Q I'll represent to you that it's decided
11 by the First Circuit in 1990 -- rather 2005. You did
12 not rely on that case in writing your expert report
13 either, correct?

14 A Correct.

15 Q Are you familiar with the court and
16 Ungar's view on the effect of UN resolutions on
17 United States law?

18 A I don't recall what the court might have
19 said on that point.

20 Q I will read you a statement from that
21 decision. The court said, "To be sure, the
22 Defendants point proudly to the UN's 1974 recognition
23 of the PLO. We do not minimize the political
24 significance of that event. The fact remains,
25 however, that neither political recognition of the

Page 187

1 Q You know that the Southern District of
2 New York, the judges of the Southern District of New
3 York, are bound by the other judges of the Southern
4 District of New York's opinions, correct?

5 MR O'TOOLE: I am going to
6 object because I am not sure that's
7 right.

8 A I don't know that to be true.

9 Q Do you know -- do you know that the
10 Southern District of New York at the least is bound
11 by the Second Circuit Court of Appeals' decisions?

12 A Yes.

13 Q Okay. And you don't think that given
14 your position that the Knox case was decided
15 incorrectly wasn't important to point out in your
16 report that there was this reason that they got it
17 wrong and they should instead decide according to
18 your view?

19 A I was asked to do a report on the status
20 of Palestine and whether Palestine is a state. I
21 wasn't asked necessarily to review all of the
22 opinions to the contrary which would have required a
23 much more extensive exercise than what I was engaged
24 in. I included in my report those issues and facts
25 that I thought were relevant to the acceptance of

Page 189

1 PLO nor the United Nations support for
2 self-government" -- "self-governance is sufficient to
3 signify that the Restatement's conditions for
4 statehood have been met." Do you agree with that
5 statement?

6 A No.

7 Q And you didn't think it was important to
8 include in your report.

9 A No. It's another instance of bad
10 analysis that goes against my opinion, but the court
11 shouldn't have been referring to Montevideo, and it
12 incorrectly talks about the role of the United
13 Nations. It doesn't talk about the -- well, of
14 course, they couldn't have talked about the 2012
15 resolution, but the resolutions reflect views of
16 individual states and that's what's important about
17 UN resolutions. It isn't so much their -- their
18 effect. I think there is reference there to --

19 Q The United States is an individual state,
20 right?

21 A Yes.

22 Q So to the extent that the United States
23 is part of the United Nations, their position is
24 relevant.

25 A Well, the position of all states is

48 (Pages 186 to 189)

Page 190

1 relevant, but if you have a few states that take a
2 contrary position, that doesn't negate the fact of
3 statehood. And as I say, the position of the United
4 States says -- depends on whether you want to listen
5 to what I would call political pronouncements on the
6 one hand or practical action by the United States
7 which I think does reflect an acceptance of Palestine
8 as a state.

9 Q So do you think that the court should
10 have been guided by UN General Assembly resolutions
11 as opposed to the United States government's
12 position?

13 A Well, I think it should have looked at
14 the issue of the status of Palestine on the basis
15 of -- of international law which is applicable in
16 U.S. courts. It could consider the views of the
17 United States as being significant to the extent that
18 the views of any other state are significant. But it
19 should not have been -- have relied so heavily on the
20 fact that the United States hasn't granted diplomatic
21 recognition which doesn't even mean the United States
22 doesn't accept Palestine as a state.

23 Q Do you think that this debate or this
24 way -- this way in which you distinguish Ungar was
25 relevant to your expert report in this case?

Page 192

1 is not recognized by the United States does not meet
2 the definition of a state under United States and
3 international law and, hence, does not constitute a
4 foreign state for FSIA purposes." Did you consider
5 that decision in your expert report?

6 A No. Again, I think it's simply incorrect
7 and would not lead me to come to any different
8 opinion, again, the referring to recognition as if
9 recognition is key. And they are referring to the
10 definition of state under U.S. law. There is no
11 definition of state under U.S. law. The definition
12 of state comes out of international law. Maybe
13 that's what they mean and they are just being -- the
14 court is being imprecise.

15 Q That is your opinion as to how to
16 distinguish this case, correct, or how to cast doubt
17 upon this case, correct?

18 A It's why I didn't -- wouldn't have
19 considered it to lead me to come to a contrary
20 opinion.

21 Q "Yes" or "no," that was your opinion as
22 to why this case was decided incorrectly, right?

23 A Yes, yes.

24 Q And this is a decision that has come down
25 in the precise matter you are opining on, correct?

Page 191

1 A Well, I don't think it was necessary for
2 my conclusion to explain why Palestine is a state to
3 be refuting all, you know, contrary analyses.

4 Q Even if that contrary analysis is binding
5 United States law?

6 A I do not accept your position that it's
7 binding United States law. This is the Second
8 Circuit?

9 Q First Circuit. And we are in a district
10 court, and the First Circuit is an appellate court.

11 A And there has been a great deal of
12 international practice since the time of Ungar so
13 there's no need for a U.S. district court in the
14 First Circuit to follow the Ungar approach without
15 question, I mean, because it's a question of
16 international practice, and they would have to take
17 into account the totality of that practice.

18 Q Okay. Have you -- are you familiar with
19 the Southern District of New York's 2008 decision in
20 the present case on which you are opining?

21 A No.

22 Q No. I will read you a sentence from that
23 case which again was -- I will represent to you was a
24 case decided in the Southern District of New York in
25 2008 in the Sokolow case. "Palestine whose statehood

Page 193

1 A Yes. I am being asked for my opinion. I
2 am not asking what the court has already said.

3 Q But in providing your expert opinion for
4 a case on which there was a decision that was
5 contrary to your opinion, you didn't think it was
6 important to present the exact type of analysis that
7 you just said here to distinguish this decision?

8 A Well, I think what I have said in my
9 report explains why -- the reasoning that's reflected
10 in what you read to me is not correct. I didn't need
11 to mention it, you know, by page citation
12 necessarily.

13 Q And you weren't -- you weren't familiar
14 with this decision while you were writing your
15 report, correct?

16 A No, no. But I -- but I think I -- what
17 I've said is an adequate recitation of that.

18 Q So we talked about, for example, the 2003
19 performance-based road map for -- to a permanent
20 two-state solution to the Israeli-Palestinian
21 Conflict, right?

22 A Yes.

23 Q And that obviously by its name was a
24 source from 2003, right?

25 A Yes.

49 (Pages 190 to 193)

Page 194

1 Q That was before the 2004 Knox decision,
2 correct?

3 A Yes. I'm taking the date of it from you,
4 yes.

5 Q And that was before the 2005 Ungar
6 decision, right?

7 A Again, I'm taking your date.

8 Q And that was before the 2008 decision in
9 this matter, correct?

10 A Yes.

11 Q But you didn't rely on any of those cases
12 in coming to the conclusions that you did in your
13 expert report, right?

14 A Well, I mean, I referred to the 2003 road
15 map, the fact that maybe nobody cited that to the
16 court in those cases, the court didn't take it into
17 account --

18 Q I am asking if you cited to any of these
19 cases which were more recent assertions made by the
20 United States -- a branch of the United States
21 government. I am asking whether you took those
22 sources into consideration in your report as opposed
23 to a 2003 document that implicitly accepted Palestine
24 as a state.

25 A No. The 2003 document shows the United

Page 196

1 Q And the United States voted against the
2 General Assembly resolution of 2012, right?

3 A That's correct but irrelevant, yes.

4 MS. MACHNES: Okay, okay.

5 If we could just take a 2- or 3-minute
6 break.

7 MR O'TOOLE: That's fine.

8 MS. MACHNES: We might be
9 able to wrap up shortly.

10 (Recess taken.)

11 Q Professor Quigley, do you know how many
12 countries have not granted Palestine diplomatic
13 recognition?

14 A There are about 190 depending on how you
15 count exactly 190 countries. There are approximately
16 130 that have granted diplomatic recognition so that
17 would be 60 that have not.

18 Q Okay. And the 130 you are getting from
19 the 2012 General Assembly resolution?

20 A No, no. That's not related to the
21 General Assembly resolution. That's -- that's
22 related to diplomatic practice, the establishment of
23 diplomatic relations, Palestine diplomatic missions
24 in different countries.

25 Q So that's based on some independent

Page 195

1 States accepts Palestine as a state. The subsequent
2 cases are simply badly reasoned opinions on the
3 subject.

4 Q Okay. Did you cite any source in your
5 report that takes the opposite view of your
6 conclusions?

7 A I did not.

8 Q Why?

9 A I took it as my task to make an argument
10 in support of the proposition that I believed. My
11 conclusion is that Palestine is a state, and I
12 presented the evidence showing that. I mean, I could
13 have written a much longer report that goes into, you
14 know, scholars X, Y, and Z but that was not what it's
15 doing.

16 Q But you acknowledge that there are other
17 scholars that disagree with your assertion?

18 A Certainly.

19 Q And you acknowledge there are other
20 United States law that is binding on the Southern
21 District, at least the Second Circuit case that
22 disagree with your opinion?

23 A Yes, except to the extent when you say
24 it's binding all these cases that were decided, of
25 course, before the General Assembly action of 2012.

Page 197

1 analysis that you have done?

2 A Yes, yes.

3 Q Okay. And what does that analysis
4 consist of?

5 A It's based on looking at the practice
6 of -- of states with respect to granting diplomatic
7 recognition to -- to Palestine.

8 Q So those 130, have they expressly granted
9 diplomatic recognition or have some of them
10 implicitly granted --

11 A Those are all fairly expressed. There
12 may be some fudging or some room for difference of
13 opinion on some of them which is why I'm not prepared
14 to state a hard and fast number, but it's -- it's
15 close to that number of 130.

16 Q How many, approximately, do you think may
17 fall into the fudging category?

18 A Well, I mean, most of them have
19 diplomatic relations in the way that you have
20 diplomatic relations with states. That's fairly
21 solid so a few of them may have made statements that
22 are a bit mirky but it would -- the number that's
23 solid is rather close to the 130, I think.

24 MS. MACHNES: Okay. I
25 think we are finished.

50 (Pages 194 to 197)

Page 198

1 MR O'TOOLE: I think I have
2 very few questions.
3 EXAMINATION
4 BY MR. O'TOOLE:
5 Q So earlier, Professor Quigley, you were
6 asked about the control by the Palestinian government
7 over the territory of Palestine and the West Bank
8 during the period from 2000 -- 2000 to 2004. Do you
9 recall that?
10 A Yes.
11 Q And I believe you testified that the
12 Palestinian government provided various services
13 during that timeframe such as police, they arrested
14 people, that there were court systems going on. Do
15 you recall that testimony?
16 A Yes.
17 Q Now, when you were talking about the 2000
18 to 2004 time period, were there things going on at
19 that point that would have -- would affect the
20 control that the government might have had in that
21 time period?
22 A Well, of course, as the occupation of
23 Israel which limited the extent of control.
24 Q And I'm thinking also in that time period
25 are you familiar with an operation that's been

Page 199

1 referred to as Operation Defensive Shield?
2 A No.
3 Q Well, let --
4 MS. MACHNES: Objection.
5 MR O'TOOLE: What's the
6 basis?
7 MS. MACHNES: Leading the
8 witness.
9 MR O'TOOLE: I was asking
10 him if he is familiar with Operation
11 Defensive Shield. He said no.
12 MS. MACHNES: He said no.
13 MR O'TOOLE: Right, so I'm
14 asking him now if he is familiar with
15 various insurgents by the Israeli
16 Defense Forces into the West Bank
17 between 2000 and 2004.
18 A Oh, yes, yes.
19 Q Can you just explain the extent of those
20 insurgents?
21 A Well, yeah. This was a period when there
22 were insurgents, in particular the most significant
23 was in the town of Jenin in the West Bank that --
24 where the Israel Defense Forces engaged in rather
25 extensive military operations.

Page 200

1 Q And in other cities in the West Bank as
2 well or no?
3 A In other cities, yeah, Jenin was the most
4 prominent.
5 Q And would that affect your description of
6 the amount of Palestinian control over the
7 territories during that time period?
8 A Well, that's a reflection of the fact
9 that the control was limited to Palestine's
10 government, didn't have the ability to prevent the
11 Israeli armed forces from coming into the territory
12 that was supposedly under the control of the PA.
13 Q Now, did those facts in terms of the
14 insurgents have any effect on your opinion as to
15 Palestinian statehood?
16 A Well, there is overall belligerent
17 occupation here. That means that there -- there
18 isn't total control and those incidents are just a --
19 an example of how that worked out in practice.
20 Q Turning to a different topic now, I
21 think -- I believe you testified that the United
22 States does not diplomatically recognize Palestine;
23 is that correct?
24 A Yes.
25 Q And does that affect your opinion as to

Page 201

1 whether Palestine is a state?
2 A Well, if the United States were to accord
3 diplomatic recognition, it would mean that the United
4 States was part of this what I find the international
5 consensus, so the view of the United States is not
6 definitive or determinative on the issue of whether
7 Palestine is a state.
8 Q Well, and I was going to ask for other
9 examples where there might be an unrecognized state.
10 Do you have any other examples of that?
11 A Well, I mean, there are, you know, such
12 instances. The United States didn't recognize the
13 Soviet Union as a state until the Roosevelt
14 Administration in 1933, but it had been functioning
15 since the time of the revolution in Russia and was
16 generally accepted as a state by the European powers,
17 by other states of the world so you did have a
18 situation of -- for that time period of
19 nonrecognition by the United States of an entity that
20 I think it's fair to say was -- was accepted as a
21 state at that point in the international community.
22 MR O'TOOLE: No further
23 questions.
24 MS. MACHNES: Done.
25 (Time Noted: 3:18 p.m.)

51 (Pages 198 to 201)

Page 202

ACKNOWLEDGMENT

STATE OF OHIO)
:SS
COUNTY OF _____)

I, JOHN B. QUIGLEY, hereby certify that I have read the transcript of my testimony taken under oath in my deposition on October 10, 2013; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

JOHN B. QUIGLEY

Signed and subscribed to before me
this ____ day of _____, 2013.

Notary Public, State of Ohio

Page 204

*** ERRATA SHEET ***
TRANSPERFECT DEPOSITION SERVICES
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CASE: MARK I. SOKOLOW, ET AL. vs. THE PALESTINE
LIBERATION ORGANIZATION, ET AL.
DATE: OCTOBER 10, 2013
WITNESS: JOHN B. QUIGLEY

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JOHN B. QUIGLEY

Subscribed and sworn to before me

this ____ day of _____, 20__.

Notary Public

Page 203

CERTIFICATE

State of Ohio)
:SS

County of _____)

I, KAREN SUE GIBSON, RMR, a Notary Public within and for the State of Ohio, do hereby certify:

That JOHN B. QUIGLEY, the witness whose deposition is herein set forth, was fully sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of October, 2013.

KAREN SUE GIBSON, Registered
Merit Reporter and Notary Public
in and for the State of Ohio.

My commission expires August 14, 2015.

52 (Pages 202 to 204)

A	140:4 141:7	account 102:9	25:5 26:22 27:11	71:6 72:12 73:20
\$250 86:13,15	142:19 143:4,23	132:2 171:4,5	27:19,19 30:3	73:21 74:12,15
A-T-T-A 74:25	147:2,6,7 151:10	179:15 191:17	add 7:25 99:15	78:21 80:5 88:7
a.m 2:7	151:13 158:2	194:17	151:8	affiliated 58:24
Abbas 109:24	162:19 167:8	accurate 7:17	added 65:8	59:13,16
abbreviated 106:13	170:18,23 171:22	accurately 186:22	adding 151:24	affiliation 58:23
ability 133:1,3,23	176:13 184:6	acknowledge 169:2	addition 77:16	affiliations 58:20
134:3 135:24	185:23 187:25	195:16,19	84:21 113:3	59:1,21
200:10	190:7	acknowledging	additional 43:18	affirmative 150:14
able 18:23 112:2	accepted 16:9,10	104:14	84:15,23	afield 100:18
114:16 122:14	80:5 112:20	ACKNOWLED...	address 94:24	afraid 162:4 180:4
196:9	114:17 116:11	202:1	162:13,22	Africa 12:18 13:3,8
abrogated 100:7	117:19 119:12	acquainted 15:5	addressed 83:10	64:24
absent 184:23	124:4,5,7,22,25	16:14	124:14 178:7	agencies 132:21
absentee 51:24	127:9,13 140:10	acquiesce 136:18	adequate 184:10	152:12
absolutely 66:21	141:22 142:2	acquiescence	193:17	agency 152:19
abstain 157:19	143:25 144:11	136:23	administer 5:14	153:1
abstained 153:11	146:3 150:12	acquitted 76:13,23	administering	agenda 163:2
153:21	151:16 154:10	77:2	24:12 105:23	ago 47:18 71:7
abstention 157:25	155:9 162:7	act 58:5,8,11,12,13	106:2 107:4	96:20 99:17
158:1,5	163:16 167:3,15	58:15 92:12 97:13	administers 112:10	agree 67:5,7 125:14
abstentions 157:21	168:11,16,19,20	147:21	administration	141:11 143:11
academic 18:14	169:3,4 173:24	action 1:6 55:7	110:19 201:14	162:15 189:4
44:18	174:1 176:9 178:4	135:11 147:14	administrative	agreed 5:2,8,12
academics 19:15,25	194:23 201:16,20	190:6 195:25	105:21	143:3
20:8 21:12,15	accepting 115:8	203:12	admission 113:14	Agreeing 164:14
22:8,9	142:24 153:15	actions 158:9 176:4	113:19 142:10	agreement 30:7
accept 38:18 118:6	160:20 161:24	active 45:10,11,12	148:9,11 149:25	37:3 106:21 110:3
119:1 125:18	162:8 163:13	45:19,21 46:3,6	admit 33:14 146:15	110:5,7 131:14,15
127:18 138:21	167:25 176:5	46:11	admits 33:11 150:3	agreements 31:6
139:2,3 140:12,14	accepts 139:18	actively 136:17	admitted 45:7,8,24	67:18,25
140:20,22 141:3,8	158:8,22 164:9,19	activities 18:18	46:9,20 113:18	ahead 148:3
145:16 151:22	166:25 169:9,25	107:8	139:5 152:19	aid 48:5,12
152:2,2 156:13	170:2,5 173:4,16	activity 15:11	admitting 139:6	aide 24:12
157:24 158:3	174:6 175:20	32:15,17,24 56:20	142:7	aimed 91:19 93:24
161:18 162:12	178:1 195:1	95:17 97:20	adopt 148:13	aircraft 79:16
173:19,24 176:2	access 102:9 181:6	101:25 109:5	adopted 95:7,15	AL 1:4,7 204:4,4
179:18 185:24	accommodation	110:14	118:14 148:3	allegation 76:12,14
190:22 191:6	20:20	acts 91:18 92:5,19	adopts 180:13	alleged 76:17
acceptance 113:1,2	accord 108:7 110:4	93:8 94:25 97:23	advice 27:5 96:22	allies 122:9,13
113:8,12,15,21	155:18 159:22	98:11,22,25 99:18	97:3,13,16,17	allowed 40:25
115:24 116:1,15	161:1 186:4 201:2	99:21 100:14	121:22	41:18,19 96:15
117:10 118:7,23	accorded 139:4,7	102:19,20 103:5	advises 97:5,10	167:6,24
119:23 124:20	140:16 142:11	108:14 111:14	affairs 114:7	allows 38:21
125:4 138:15,17	151:7 154:4	136:11	affect 198:19 200:5	103:17
139:10,13,21	Accords 4:12 63:25	actual 89:6 112:4	200:25	ambiguity 92:2,11
	67:2 107:10,13	Adam 23:19,20,21	affidavit 70:24	ambiguous 91:25

96:6,9 American 63:23 66:19 127:4 amicus 47:21 48:23 49:17,22 50:9 57:17,20 amount 130:6 131:24 166:16 200:6 analyses 172:1 191:3 analysis 112:23 113:5 118:16,22 119:4,20 124:21 126:10,13 129:25 138:14 170:23 171:9,15 172:3,17 172:20 180:23 184:12 186:10 189:10 191:4 193:6 197:1,3 analyze 126:1 172:5,7 analyzed 172:9 analyzes 126:6 analyzing 129:22 ancient 104:10,17 and/or 42:5 answer 6:17 81:9 81:11 82:21 83:21 94:12 101:19 109:20 151:18 154:19 166:9 186:23 answering 166:11 answers 202:11 Antiterrorism 58:5 58:7,11,15 anybody 179:14,25 apart 102:23 apparently 185:4 Appeals 180:7 187:11 188:7 appear 31:5 61:8 appeared 50:15 74:3 appellate 191:10	applicable 190:15 applied 35:23 58:15 118:4 152:18 177:9 apply 54:8,11 133:15 162:2 177:18 184:3,12 applying 11:10 54:20,22 appointment 8:2,3 8:4 10:1 approach 32:21 33:9,18,24 34:3 36:17 38:5 120:4 180:16 184:16,17 184:19 191:14 approached 148:8 approaches 33:5 40:13 appropriate 145:14 appropriately 114:9 approved 8:3 33:25 approximately 13:1 17:4 61:17 61:20 62:16 196:15 197:16 April 159:4,16,19 160:3,23 Arab-Israeli 13:14 13:16 31:15 87:24 88:23 89:10,12,24 90:11 arbitration 51:14 52:5,7 53:5 69:15 area 13:20 18:5,9 42:18,21 70:19 75:23 87:13 105:19 112:23 132:6,9 areas 44:6 110:25 132:10 136:1 argue 54:5 123:23 argued 54:1 argument 53:8,15 97:5 116:25 117:4 117:8,18,20 195:9	arguments 53:10 85:10 116:22 117:15 arisen 166:8 arises 49:5 armed 200:11 army 43:12,14 115:3 Arnold 3:2 6:11 arose 121:7 154:23 arrangement 144:9 162:15 arrangements 111:20 arrest 49:10 133:11 arrested 49:6 99:20 198:13 arrived 167:23 article 63:23 64:7 67:1 articles 62:21 63:3 63:11,15 64:11,21 65:10,17,19 66:11 172:22 182:23 asked 23:18 24:17 25:14,16 27:5,17 28:25 30:22,23 37:16 49:22 81:3 81:14 181:13 184:7 187:19,21 193:1 198:6 asking 39:10 42:24 51:8 82:19 85:16 102:23 105:18 136:13 155:25 157:8,9 159:18 179:10 181:15 193:2 194:18,21 199:9,14 asks 27:3 Assembly 39:8 84:19 107:18,19 144:23,23 145:2 147:3 148:2,9,12 148:21,22,24,25 149:13,17 150:3,7 153:6 174:17	175:1,7 190:10 195:25 196:2,19 196:21 assert 89:21 asserting 88:22,25 assertion 122:2 164:7,18 173:3 195:17 assertions 194:19 assign 62:19 assistance 95:9 assistant 9:23,25 associate 8:22 Association 143:7 assumed 123:11 174:3 assuming 27:1 assumption 79:21 125:15 Atta 74:25 78:17 attacks 101:14 attempt 40:4,5 attempts 39:24 40:3,10 41:4 attended 31:18 34:18,25 35:7 attention 67:9 136:4 attorney 48:14,17 97:20 98:14 attorneys 3:3,10 5:3 27:18 August 203:22 authored 57:21 authoritative 93:20 authorities 94:9 105:3,12,19 106:7 111:5,18,24 127:6 authority 41:9 91:19 103:22,23 103:24 104:21,25 105:1,22 106:2,9 106:11,11,19 108:10,11,12,17 108:18 109:2 110:9,13 111:10 111:12,16,23	112:2,5,5 115:1 127:11 128:1,10 128:13 130:22 131:23 132:11,15 132:25 133:11,17 134:9,19,23 135:2 136:6,7,8,15,19 136:21,22 137:4 137:11,17 138:5 149:21 168:14,17 169:8 183:7 Authority's 110:8 authorized 5:14 135:11 authors 172:22 Avenue 3:4 aware 74:13,17 80:4 83:16 93:7 100:15 101:3,7,10 103:16,18 118:9 118:13 128:11 169:16 170:7 175:9 178:8 181:10 182:14 Azerbaijan 51:15 51:16
B				
B 1:13 2:11 4:3 6:1 64:20 202:6,15 203:7 204:5,21 B-I-R 22:6 back 11:22 12:3,11 13:21,24 15:9,17 23:2 26:19,20 29:3,5 34:8 37:20 47:17,24 50:14 51:3 57:19 66:25 71:9 76:21 87:7 119:7 153:6 164:21 167:1 177:10 background 6:15 13:19 14:6,9 26:3 89:6 112:17 bad 67:18 186:10 189:9				

badly 195:2	believe 67:23 80:16	61:11,12,18 62:8	77:12	72:7,9,13,21,25
Balfour 15:10 32:3	83:23 95:16	84:3,5,9,13,13,16	built 77:13	73:23 74:18,20,24
bank 19:6 21:7	105:13 109:24	84:20,21,21,25	bus 76:13,18,24	75:1,4,11,13 76:3
34:20,21 42:4,10	152:20 170:4	85:2,3,4,6,9,10,14	business 22:23	76:7 77:5 78:17
43:6,16 68:11	198:11 200:21	85:23 171:20		79:8,10,10,11,11
76:19 77:9 102:8	believed 195:10	184:8	<hr/> C <hr/>	79:14,19,24 80:2
106:3 137:4 198:7	belligerent 19:5	books 9:8 61:3,3,7	C 3:1	80:10,11 81:15
199:16,23 200:1	21:21 28:4 43:2,7	61:25 62:2,15,17	calendar 80:20	82:1 83:17,24
Bar 45:15	43:11,20 76:1	border 168:4	call 15:21 63:2	87:10 88:8 92:25
bargain 67:18	77:14 105:25	borders 29:24	125:2 130:17	96:21 118:10,11
bars 45:9	106:4,4 112:3	143:2,3,6,7	172:19 182:4	120:14 121:3,6,7
base 139:23 172:3	114:10 132:3	162:16 164:14	190:5	138:8,9 175:9
based 75:24 77:13	137:21,24,25	Bosnia 52:22	called 6:1 9:8,10	177:11,19 180:2,6
78:17 91:3,7	168:14,18 200:16	bound 181:17	23:19 43:7 52:6	180:10,12,25
96:19 120:1,2	Benjamin 142:21	186:13,19 187:3	63:25 67:1,13	181:24 182:4,9,11
134:13 136:11	bespoke 142:19	187:10	72:21 77:18 84:3	182:12,14 183:21
154:5 156:5	best 85:17	branch 166:5 173:9	95:8 108:16 128:6	184:21 185:13,25
170:19 171:12	better 18:12,17	173:14 174:10,12	154:24 188:3	187:14 188:3,6,12
175:17 196:25	beyond 84:16	177:25 184:24	calling 108:20	190:25 191:20,23
197:5	bid 146:20 147:11	194:20	calls 81:6 82:17	191:24,25 192:16
basic 9:8 10:11,12	148:7,9,16 152:5	break 6:19,21	83:19 123:2	192:17,22 193:4
10:19 11:6 20:25	bids 152:8	50:24 51:1 87:6	165:16	195:21 204:4
43:5 44:3 61:10	binding 57:1,2,4,6	121:11 169:13	Cambodia 61:12	cases 29:13 39:12
61:15 85:11	57:11 94:3,9	196:6	61:22	46:14,22 47:1,2,3
117:18 118:7	116:7 149:5,6,9	breaks 6:20 121:19	Cambridge 48:9	47:5,9,14,14 48:6
124:24 131:10	149:12,13,16	breakup 51:19 88:2	Canada 69:6	48:15 49:17 50:8
132:11	150:18,21,22	Bri 31:12	Canadian 69:9,10	50:21 53:1,2 54:6
basically 21:20	181:11,25 184:13	brief 49:22,25	capacity 14:12 27:2	54:8,21,25 58:5
135:13	186:1 191:4,7	53:20	27:23 49:13 53:6	68:17 70:4,6,7,9
basing 171:24,25	195:20,24	briefing 48:23	58:25 128:7	70:10 71:10,17
basis 38:20 41:11	binds 186:21	briefings 49:17	129:18 144:20	72:18 73:3,8,22
41:11 75:22 83:11	Bir 22:3 30:22	briefly 57:16	career 44:16,17	73:23,24,24 74:3
90:8 98:15 115:4	bit 6:15 7:22 12:15	briefs 47:21 50:4	49:16,19 57:21	74:7,9,12 178:10
120:17 139:15,16	23:3 85:12 94:6	57:17,20 58:1	61:4	178:14 179:10
175:15 184:3	144:22 163:22	bright 112:24	carried 67:20 111:7	182:24 194:11,16
190:14 199:6	197:22	113:3	159:3	194:19 195:2,24
Beatles 168:5	blood 203:13	Britain 15:10	carries 104:22	Caspian 52:3
began 10:10 12:17	blowing 76:24	122:15 164:23	106:25 110:18	cast 192:16
13:18 16:12 81:17	blown 76:13,17	165:19	case 34:5 50:15	category 197:17
167:21	bodies 53:2 55:1	British 11:16,19	51:14,20 52:2,4,9	caveat 129:24
beginning 15:18	69:4	24:12,18 25:19	52:12,16 54:13,14	centuries 105:16
39:1 117:1 131:4	body 52:4,5 53:24	105:20	54:17 55:6,12,13	century 17:12
138:12 159:9	93:21 94:18	broad 66:20	56:8 57:12 58:16	30:16,19 177:11
177:13	112:14 119:22	109:2	58:16,17 62:5	certain 89:25 97:13
behalf 6:9,11 50:5	bolded 129:13	broadly 108:24	63:9 67:8 69:5,7	107:2 113:9
111:14	bombings 93:11	brought 20:24	69:12 70:18,20,25	129:22 130:6
behavior 98:16	book 14:21,23 61:9	building 77:11,11	71:6,16,24 72:3,6	131:9,20 139:21

148:23 159:6	citation 193:11	148:1,1 154:3	comparative 9:2	21:2,4 22:25 24:4
160:24 161:7	cite 85:1 86:4,7,7	168:3 192:7,19,24	12:8	24:15 28:7,10
certainly 36:20	120:13 126:23	comes 91:1 113:2	compensated 86:9	31:15 32:8 43:24
101:23 147:7	146:23 152:15	115:3 136:16	102:5,10	44:11,14 45:2
156:16 195:18	164:6,17,25 165:7	140:2 143:17	compensation	55:2 58:1 59:17
CERTIFICATE	165:11 166:20,23	146:8 165:15	86:12	62:3 65:20,25
203:1	169:7,11 172:12	192:12	complaint 83:24	66:1,14,15 87:24
certification 5:5	173:11,14 174:21	coming 20:20 29:18	complete 7:17	88:24 89:10,13,22
certify 202:6 203:6	175:3 182:1	95:14 173:7	114:7 130:18	89:24 90:11 91:6
203:11	183:16 195:4	178:13 182:3	202:9	91:8 158:19,20
chair 109:25	cited 77:23 85:2,6	183:18 194:12	completely 40:5	185:1 193:21
Challenge 14:24,25	122:1 151:21	200:11	complicated 36:6,8	conflicting 177:16
change 7:25 160:2	172:24 173:3,17	comments 86:1	112:23 141:14	177:20
181:19,20,23	179:2,5,5,8,8,10	commercial 52:6	comprehensive	conflicts 177:15
changed 43:3,5,9	194:15,18	commission 51:14	52:25 57:20 61:3	conformity 113:4
43:22,25 44:3	cities 200:1,3	53:16 77:17,18,23	62:22	113:11 115:13,15
character 89:7	citizens 35:25	78:4,11 203:22	concept 97:1	confuses 145:14
characterization	36:16,25	commit 97:10	concern 78:14	confusion 143:17
65:21 115:14	citizenship 36:2,19	committed 99:18	concerns 21:22	Congratulations
characterize 109:6	36:21,23 37:4,4,5	committee 53:20	concluded 127:3	8:5
148:21	37:12 120:24	55:5,14,14 56:11	142:16 159:5	Congress 136:11
charged 77:8	167:5,5	57:3,10 59:5,7	concluding 119:16	178:4,6
165:18	civil 1:6 107:5	committing 97:6	conclusion 85:13	connection 7:11
charges 39:13	civilians 93:12	common 11:20	86:2 104:12	25:24 26:5 36:1,3
47:17 48:20 76:23	98:12,23 99:19	commonly 110:3	166:23 173:7	63:4 66:13,22
charter 108:15,16	101:15 102:20	Commonwealth	178:13 183:12,18	142:17
148:23	claim 88:14 89:9	70:15	191:2 195:11	consensus 201:5
CHARTERED 3:9	claimed 88:8	communication	conclusions 194:12	consequences 49:8
check 166:11,13	clauses 161:9,12	41:20	195:6	consider 97:25
Chevalier 3:9	cleansing 67:20	communications	condition 152:21	111:23 143:15
80:15,24	clear 96:7 135:25	27:4 29:2 81:6	conditions 189:3	147:22 149:18
Chicago 71:15,17	185:15	82:17 83:20	conduct 110:13	150:16 151:4
Child 53:21 55:5	clearly 141:6	community 16:10	113:5 134:3	153:18,23 157:6
55:16,20 57:4	client 27:9,12,22	18:23 87:16 89:1	135:11	170:16 172:6
children 55:8	clients 30:2 49:13	89:5 90:5 112:20	conducts 135:12	173:8 174:9
choice 54:18	close 146:9 197:15	115:10 117:11,19	confer 38:20,22	177:24 178:11
choose 85:8,17	197:23	118:24,24 119:12	39:24	190:16 192:4
circles 37:7	colleague 6:10	119:24 124:4,22	conference 17:21	considerable 138:9
circuit 45:23 46:9	Collecting 107:4	138:16 139:17	17:22 31:3 34:11	consideration
46:15 118:10,11	College 10:4,9	149:2 151:12	34:17,18,25 35:13	185:7 194:22
118:14,20,20	Colorado 71:6 72:7	164:8,19 166:25	36:11 37:14	considered 35:24
126:6 180:6,12	73:23 74:1	169:24 170:5	conferring 38:9	35:25 36:3,15
187:11 188:7,9,11	Columbus 1:14	183:24 184:6	conflict 12:18 13:7	111:18 114:12,14
191:8,9,10,14	2:12,13	188:1 201:21	13:13,14,16 14:7	116:11 118:5,19
195:21	come 31:6 64:18	company 51:15,15	14:11 15:5,8	125:17 130:16
circumstances	87:7 120:9 127:5	51:17 52:3	16:13,19 18:6,22	139:22 143:10
95:13	143:21 144:8	comparable 165:23	20:13,14,17,18	144:3 145:23

178:17 192:19 considering 98:19 156:16 consist 197:4 consisted 44:17 consistent 175:23 176:4 185:13 consolute 49:8 conspire 98:21 constitute 97:13 102:2 105:13 116:16 192:3 constituted 108:20 constitutes 117:17 126:14 140:22 Constitution 136:12 construed 150:1 Consular 49:2 70:6 70:9,17,21 72:4 consult 25:14,16 28:17 83:6 consultant 53:9 54:3,4 consulted 26:17 27:2 consulting 23:19,22 23:25 24:4 27:21 27:22 contact 25:11 26:17 80:19 contacted 80:13 contemplated 159:16 173:23 content 38:15 context 47:7 99:4,5 99:8 122:25 156:23 contexts 123:12 contingent 161:7 continue 101:25 CONTINUED 121:15 continues 117:2 135:6 contract 54:15,18 100:7	contrary 178:24 179:11,13,20,21 187:22 190:2 191:3,4 192:19 193:5 contribute 146:11 control 21:5,7 112:2 114:7,16 115:2 128:14,17 129:17 130:3,6,8 130:9,13,14,18,23 131:1,5,23,24 132:4 134:19 137:22 138:7,10 183:9 198:6,20,23 200:6,9,12,18 controversial 88:5 controversy 20:22 21:2 convention 49:2 50:3 55:16,19,23 56:1,5 57:9 70:6,9 70:17,21 71:17 72:4 119:11 127:2 127:19 128:19 130:10 conventions 93:19 converge 32:22 conversation 82:8 conversations 20:16 convicted 99:21 100:1,1,14 101:14 101:24 102:20 103:5,7,11 copy 7:10 60:8 corporate 47:5 correct 41:25 64:1 67:3,4 81:15 83:1 86:10 88:9 103:24 110:4,15 113:25 114:1,20 116:4,23 117:3 122:4 123:25 124:21 126:3,8,24 128:20 131:2 133:24 134:16 139:10,14	141:15 144:2 146:1,17,21 148:10 152:3,6 154:17 157:21 158:14 161:9,19 162:23 164:3 176:23 180:16 181:3,12 182:12 182:13 187:4 188:7,13,14 192:16,17,25 193:10,15 194:2,9 196:3 200:23 202:10,12 costs 51:17 Council 34:1 91:21 93:22 94:2,8,14 147:12,13,21,24 147:25 148:7,16 149:20,22 150:7 152:6 counsel 50:14,15 55:11 80:10 81:7 82:8,10 83:20 121:19,23 180:21 count 196:15 countries 24:11,13 35:19 196:12,15 196:24 country 49:8 107:5 108:13 138:4 county 71:14 202:4 203:3 couple 13:6 53:17 122:15 178:10,14 course 10:8,10 11:7 11:7,8,9 13:7,16 14:8 15:6 16:18 29:10 49:15,19 57:21 62:18,18 86:2 105:12 132:2 140:15 189:14 195:25 198:22 courses 10:19 12:6 12:7,11,14 court 1:1 5:16 19:7 22:5 32:23 38:6	38:10,18,20,22 39:12,15,16,17,19 40:7,13,18,21,24 40:25 41:9,10 43:8 45:18 46:6 50:4,16 52:20 53:13 54:2 70:12 70:13,25 73:15,23 74:14 76:4 80:5,8 96:20,21,24 97:14 118:4,22 119:6,7 119:17 120:2,5,6 120:10,14,18,25 126:16,18 175:10 175:14 176:12 177:9,12,13,20,21 178:15 179:9,10 179:23 180:6,19 181:18 182:14,20 183:4,14,22 184:1 184:12,24 185:21 186:2,7 187:11 188:7,15,18,21 189:10 190:9 191:10,10,13 192:14 193:2 194:16,16 198:14 court's 38:21 183:3 183:11 courts 49:18 51:8 51:11 68:25 69:2 69:4,19 70:1 71:14 73:7 119:4 119:4,19 120:1,11 120:12 126:12,15 133:15 176:22 177:3,9,18 181:7 181:17,23 186:11 186:13,16 190:16 covered 42:16,17 Crawford 171:19 172:14 create 149:17 created 108:20 135:17 creating 160:7 crimes 11:20	criminal 10:11,11 10:19 11:3,7,9,11 11:14,15,16,19 12:5 13:5,10 32:23 38:6,10,18 40:18 47:16,17,25 48:3,6,10,15,19 48:20 49:16 50:7 70:9 criteria 117:5 118:3 119:1 120:16 125:25 126:2,8,17 129:22 137:18 criterion 152:13 critical 151:15 criticized 142:23 Cuba 79:18 Cubans 71:1 Cultural 152:25 culture 134:15 currently 44:21 68:9 160:20 181:24 curriculum 4:8 7:9 8:20 65:5,7 customary 15:24 cut 65:3,11 CV 7:10,15,20 8:6 45:8 50:20 52:25 57:19 82:3
---	--	--	---	---

D

D.C 3:12 70:19
date 65:9 72:15
80:21 84:20
147:13 194:3,7
204:5
DAWN 3:11
day 37:17,19,20
135:7 175:18
202:19 203:16
204:23
days 37:18
de 106:1
dead 40:5
deal 123:7 132:21

134:6 191:11 dealing 30:5 150:11 deals 52:5 89:5 129:10 dealt 87:16 89:1 90:5 debate 190:23 debt 123:11 debts 51:19 decade 17:12 30:19 decades 164:2 decide 39:5 119:8 125:24 126:17 155:8 175:14,16 176:22 184:1 187:17 decided 39:4,7 179:24 182:10 187:14 188:6,10 191:24 192:22 195:24 Decides 155:18 deciding 119:1 126:7 decision 39:14,15 96:19 119:21 179:9,10 182:18 188:21 191:19 192:5,24 193:4,7 193:14 194:1,6,8 decisions 19:7 57:6 120:5,13 126:18 178:17 179:13,23 180:19 187:11 decisis 181:17,22 declaration 15:10 29:21 30:10 32:4 38:18,23,25 39:3 39:5 41:6,24 79:7 79:7 80:3 134:14 142:15,22 143:1 161:21 162:10,13 165:10 declare 168:1 declared 178:4 185:2,3 declares 174:13	defendant 72:25 defendant's 80:10 82:8,10 Defendants 1:8 3:10 183:5 185:1 185:2 188:22 Defense 55:9 199:16,24 Defensive 199:1,11 define 91:14 92:9 104:20 defined 4:20 36:5 92:6 129:13,16 130:11 131:13 defining 91:16 124:13 definite 140:5 definitely 139:2 definition 16:7 92:2,3,4,12,21 93:7 104:2 117:6 123:24 124:3,10 124:17 125:2,6,12 125:16 127:1 129:11 130:10 131:25 180:13 192:2,10,11,11 definitions 91:17 91:24 92:13,16,18 92:20 113:6 114:20 115:5,18 definitive 56:14 125:23 175:19 186:6 201:6 degree 8:10,11,13 8:17 171:23 degrees 8:10 delegated 137:5 delete 8:4 demand 91:18 depart 36:25 Department 10:2,3 10:5 departments 10:2 depend 92:8 96:17 99:4 dependent 161:7	depending 196:14 depends 92:20 126:15 190:4 deportation 69:8 deposed 6:12 52:14 52:15,16 73:4,6 deposited 143:14 deposition 1:13 2:11 5:6,12 6:25 60:2 63:20 79:3 81:22 82:15 88:13 103:21 104:2 121:18,23 138:13 202:8 203:8,9 204:1 derive 108:9 derives 108:12 136:7,8,19 derogate 157:5 178:24 description 4:7 200:5 Deserves 4:14 64:1 67:2 despite 183:13 detached 122:22 123:3,6,12,13,21 123:22 detail 182:19 details 180:4 detain 134:1 determination 39:21 63:1 118:6 determinative 138:14 139:22 140:12 147:5 150:2,4 170:19,23 201:6 determine 119:22 127:5,17 129:25 determined 163:1 determines 112:17 128:16 determining 118:16 125:17 126:13,14 139:16 developed 16:21	43:22,25 88:2 developing 24:13 42:20 development 24:2 24:6 developments 40:13 differ 114:22 141:15 171:14 difference 44:4 114:3 130:2 156:10 171:23 176:25 185:22 197:12 different 10:2 12:16 36:11 50:23 68:11 78:8 99:10 109:4,5 114:6 115:11 116:6,22 124:6,6,21 131:16 138:20 146:5 147:4 149:21,23 160:3 184:16 185:22 192:7 196:24 200:20 differing 36:14 114:19,20 115:5 difficult 92:8 113:9 difficulties 20:21 20:23 difficulty 91:16 diplomatic 108:7 138:22,24 139:4,8 139:9,13 140:16 141:23 142:3,11 143:13 144:1,2,12 145:14 151:7 158:7 159:22 160:16,19 161:1,4 166:16 174:3 185:11,16,23 186:4,8 190:20 196:12,16,22,23 196:23 197:6,9,19 197:20 201:3 diplomatically 200:22	direct 84:8 179:22 directed 77:9 136:3 direction 85:21 86:5 140:13 159:3 166:19 179:7 directly 135:22 disagree 97:2,9 117:24 126:11,12 126:20,21 141:17 154:12 172:7 180:18,25 183:4,9 183:11 184:9,22 185:18 195:17,22 disagreement 141:19 disagrees 183:5 disavowed 182:15 183:15 discretionary 144:3 discuss 66:2 125:7 162:15 184:9 discussed 38:8 42:6 45:3 58:21 59:13 96:16 121:19 164:13,16 169:6 173:2 174:12 178:10 discussing 26:23 27:18,20,25 28:5 28:8,13 Discussion 121:13 disposition 131:15 167:3,15 dispute 51:17 distinction 110:17 111:3 distinctions 115:18 distinguish 180:24 190:24 192:16 193:7 distinguishing 182:1 district 1:1,1 45:18 45:18 74:19 78:24 182:9 186:17,18 187:1,2,4,10
---	---	---	---	--

191:9,13,19,24 195:21 dmurphyjohnso... 3:13 doc 159:11 doctrine 79:4 document 6:24 7:3 7:6 60:1,14 63:19 79:2 81:21,23 83:22 86:25 108:16 122:6 129:2 136:12,13 139:24 142:5 158:17,21,22,25 159:2,12,15 160:5 162:21 163:12,17 163:19,25 165:8 173:22 174:4,6 194:23,25 documentation 15:8 documents 14:17 16:15,24 91:2 93:20 107:10 162:16 doing 98:12 195:15 domestic 98:4 99:14 119:19 177:1,6,7,14,17 doubt 192:16 Downtown 2:12 dozen 17:4 49:24 50:4 68:22,23 drafted 158:17 draw 84:13 85:9 drawing 115:17 drive 136:5 dual 8:16,17 duly 6:2	165:24 173:2 198:5 early 23:8 30:13 75:3 80:20,22,23 81:3 177:11 easily 72:2 181:5 East 12:18 13:4,7 13:13 14:7 16:13 16:19 24:4,15 42:18 43:24 45:2 48:9 58:1 59:18 62:3 63:13,14,17 64:13 65:21,23 66:8,17,22 67:6 87:19,22 89:19,23 90:2,10,17,25 91:5,6 Eastern 55:2 66:1 66:14,15 74:19 easy 180:20 Economic 152:25 editions 61:24 education 134:15 effect 5:15 56:23 95:11,14 110:12 188:16 189:18 200:14 effective 143:23 effectively 120:21 effort 32:22 36:24 Egypt 168:15,18 Egyptian 105:25 eight 73:19 98:7,10 either 64:12 157:19 188:13 elaborations 29:11 election 51:24 elective 11:7 elementary 10:5 eliminate 65:14 embassies 108:7 emeritus 8:2 44:24 Empire 88:2 105:15 122:22,23 123:3 employees 100:2,12 100:13 101:6,7,14	103:5,12 employer 99:23 employment 100:7 enact 133:1 135:20 135:22 136:6,21 136:25 137:6 enacting 159:11 encompass 15:20 encourage 143:18 153:19 161:1 encouraged 101:24 encouragement 102:2 164:11 encouraging 143:22 159:21 161:4 163:24 164:1 ended 122:8 enforce 133:3 engage 96:1 98:16 129:18 138:25 139:1 engaged 187:23 199:24 engages 129:18 England 23:23 54:2 English 54:18,19 entail 96:8 enter 128:7 167:7 entering 162:14 entertains 55:14 entire 18:13 65:22 129:2 133:18 138:3 160:5,6 entirety 11:16 13:17 82:5 130:18 entities 112:19 115:9 123:13,15 123:17 125:16 129:19 130:12,19 140:15 143:18 163:4 169:16 170:7,14,14 entity 16:9 89:3 98:9,9 101:5 104:22 112:17	113:8,10,19 114:14,17,25 116:1,10 118:6,24 119:22,24 124:12 124:24 125:3,24 126:14 127:18 129:16 138:1,21 139:1,20 140:1,10 140:14,17,22 141:22 142:2,5,7 142:12,13 143:25 144:11 145:21 146:9 147:22 150:5,24 151:3 156:19 158:8,10 201:19 envisions 160:6,12 160:17,18 equivalent 146:4 ERRATA 204:1 ESQ 3:3,4,10,11 essence 89:3 119:23 essential 137:23 establish 127:16 established 68:5 126:5 141:21 171:8 173:22 174:5 186:14 establishing 160:12 160:14 establishment 196:22 estimate 87:2 ET 1:4,7 204:4,4 ethnic 67:20 European 50:5 122:8,13 159:17 201:16 event 188:24 evidence 178:25 195:12 evolution 32:7 exact 17:10 56:21 75:1 80:21 193:6 exactly 12:25 13:12 14:2 15:18 22:19 35:12 76:4,22	110:16 113:1 136:1 137:18 196:15 EXAMINATION 4:2 6:6 121:15 198:3 examined 6:4 example 28:3 43:1 58:24 65:17 66:13 85:5 92:21 95:3 96:11 98:1,20 112:3 113:13 115:12 125:8 136:10 137:6 141:2 150:2,18 171:2 193:18 200:19 examples 97:21 107:6,7 201:9,10 exchanged 162:17 excluded 64:22,24 74:14 75:5 80:6 85:20 exclusive 86:16 excuse 110:13 Executive 166:4 173:9,14 174:10 174:12 184:24 exercise 112:2,4 130:5,6,22 131:5 132:4,5 134:24 135:3,6 138:7,10 187:23 exercised 131:1,1 131:10 134:9,19 exercises 130:13 131:23 132:11,15 135:19 137:25 exercising 128:13 128:14 130:4 138:5 exhaust 42:1 exhibit 4:8,10,12 4:15,18,20 6:25 7:1 59:25 60:2 62:22 63:18,20 64:20 65:17 66:25
E E 3:1,1,11 6:1 204:2 earlier 37:17 61:9 69:11 73:5 78:3 121:17 122:1 130:25 144:22				

79:1,3 81:20,22 84:7 88:9,13,13 103:21 128:22,24 Exhibits 4:6 82:3 existence 15:13 130:19 145:5 existing 112:20 125:1 expand 12:15 expected 31:6 expenses 146:12 experience 15:2 16:16,19,20 18:5 19:2 42:23 44:6 45:1 47:6,6 68:14 88:14,18 89:16 90:18,24 91:4,9 experiences 44:19 48:22 68:24 expert 4:18 7:11,20 34:4 51:13,16 52:11 58:16 67:8 68:15,18,24 69:5 69:25 70:8,19 71:18 72:12,19,21 72:24 73:4,8,16 74:10,19,22 76:2 78:20 79:12 81:13 81:14,18 87:10,12 90:9,25 93:6,14 94:21 98:13 100:19,22 137:15 148:19 176:11 182:11,25 183:21 186:1 188:12 190:25 192:5 193:3 194:13 expertise 16:21 75:23 87:17 88:8 88:23,25 89:9,12 89:22,25 expires 203:22 explain 191:2 199:19 explained 118:23 explains 193:9 explicitly 65:25	173:24 expressed 37:7 136:23 151:10,13 154:2 164:23 197:11 expression 142:4 147:2,6,9,16,18 147:20,24 149:1 150:24 165:20 176:8,16,17 178:23 expressions 113:8 142:17 181:4 expressly 89:8,21 137:5 143:9 161:17,17 182:15 183:14 197:8 extended 141:23 158:7 extensive 88:14 89:14,16 90:16,23 171:14 172:17,19 187:23 199:25 extensively 87:19 88:19 89:18 90:9 extent 27:3 81:5 82:17 83:19,21 91:11 102:7 109:17 125:21 149:7 163:12 184:2 189:22 190:17 195:23 198:23 199:19 extradite 76:21 extradited 75:15 76:8,9,11,14,25 77:7 extradition 74:21 76:15	146:19 148:2 150:11,19 152:17 153:21 154:13 157:5 165:22 169:22 176:16 177:19 178:23 183:13 184:15 185:1,18 188:24 190:2,20 194:15 200:8 factoid 106:2 factor 118:8 128:6 128:9,10,12 139:16 170:19 factors 118:5,15,18 119:9,20 125:8,13 125:17 126:6 127:8,20 128:4 171:2,3,3 facts 99:15 170:12 183:23,24 186:25 187:24 200:13 factual 79:19 85:13 89:7 90:4 98:5 119:13 140:1 155:10,12 157:6 184:3,12 faculty 9:21 31:19 failure 49:11 fair 57:15 65:21 112:22 115:14 153:14 201:20 fairly 48:20 197:11 197:20 fall 69:23 197:17 falls 92:12 familiar 11:17,18 58:7,18 59:10 60:14 93:15 94:22 95:5 107:9,17,23 110:2 118:10 180:2 182:4 188:3 188:15 191:18 193:13 198:25 199:10,14 familiarity 58:10 91:13	far 79:25 100:18 fashion 143:15 fast 197:14 fault 56:11,11 favor 139:6 142:7 147:15 150:24 151:5,8 156:25 federal 70:25 178:15 fellow 8:21 9:4 76:8 120:20 fellowships 9:13,18 44:18 Ferguson 80:18 81:2 field 15:19 88:15 88:19 Fifteenth 3:11 fifth 53:19 fighting 164:2 figure 179:16 filed 38:24,25 41:6 47:21 80:7 92:25 files 103:14 filing 5:5 Final 67:13 finally 46:8 financial 95:9 financing 93:23,24 96:12 find 72:2 92:10 126:18 137:4 141:2 144:6 171:13,16 172:17 181:1,5,6,7 186:3 186:10 201:4 finding 57:13 77:25 findings 56:14,17 57:4 finds 184:6 fine 128:16 196:7 finished 7:4 60:4 129:1 197:25 fired 55:9 firm 23:19,22 80:15 87:1 first 6:2,24 8:25	14:20 15:9 17:12 23:6 30:19,21 34:10 38:8 40:1,2 47:24 61:2 62:4 65:2 67:12,17 75:12 80:13 81:2 105:16,20 106:20 116:25 119:16 121:18 122:8 152:14 159:4,5,10 182:21 188:6,11 191:9,10,14 first-year 11:6 fit 75:19 fits 117:5 five 14:4 flag 27:8 fled 138:3 Florida 78:24 focus 9:12,15,17 11:4 15:21 24:14 38:13,14 59:14 focused 19:4 38:4 59:17 focuses 13:14 focusing 20:21 106:6 130:8 132:24 135:9 follow 162:4 191:14 followed 95:12 following 51:19 56:24 99:15 168:8 follows 6:5 120:3 force 5:15 132:20 133:9 forces 55:10 199:16 199:24 200:11 foreign 4:22 9:10 61:11,19 115:3 126:22 129:6 192:4 foreigner 49:6 forever 181:18 forgotten 101:20 form 5:9 95:16,20 96:14 102:2 133:8
---	--	--	---	--

formal 41:7 129:19 145:25 151:9 155:2	future 26:17 28:17 162:6,11 174:2	184:7	134:23 137:3,11 137:17 168:14,17	19:14,25 24:16 97:10 98:7,20,20 102:17 141:4 151:25 159:11
former 99:22	G	given 92:11 96:18 103:11,13 136:20	government 24:18 32:21 33:6 38:19 39:24 41:3 52:22 56:4 73:1 77:17 96:1,5 97:22,22 98:8 99:25 100:12 100:13 101:13,16 103:2,3,12,17 105:20,25 111:16 129:17 130:5,13 131:5,11 132:11 132:15 134:9,24 135:3,10,10 136:8 136:16,17 138:3 146:20 148:8,8,15 152:9 161:22,22 162:5 163:21 166:5 167:21 175:17 194:21 198:6,12,20 200:10	guess 13:21 20:6,12 20:23 26:20 35:21 44:5,7 47:24 50:12 53:1 56:15 67:16 72:1 80:13 85:8,16 137:14
forming 179:17	G 6:1	148:2 153:20		guided 177:4 190:10
forms 94:25	gain 18:11 20:2	154:7 180:25		guideline 127:14
formulates 39:13	gained 9:20 18:12 19:1 44:1,7,13 113:24 116:18 120:25	187:13 202:11 203:10		guys 121:8
formulating 159:15	garbage 107:4	gives 44:11		
formulation 56:21	Gaza 19:6 21:10 32:24 42:5,14 43:16 68:12 106:1 106:21 112:10 168:13	giving 29:8 37:21 73:17 96:21 97:3 183:23,25		H
forth 77:5 203:8	Gaza-Jericho 131:14	go 17:17 23:4,18 26:20 32:6,9 34:8 37:17 47:24 52:18 86:4 88:18 117:14 119:9 121:10 127:16 131:18 171:20 179:20 186:9		H 6:1
forward 122:4	general 11:5 17:19 20:4,19 29:12,15 29:18 32:4 39:8 84:18 97:7 107:18 107:19 109:21 120:17 134:14 140:10 144:22,23 145:1 147:3 148:2 148:9,12,21,22,24 148:25 149:13,17 150:3,7 153:6 174:17 175:1,6 190:10 195:25 196:2,19,21	going 6:14,15,24 15:9,17 16:5 18:22 21:5 23:2 26:25 71:9 81:4 81:10 83:18 122:14 125:18 143:3 153:6 156:4 156:8 160:1,2 162:12 165:18 167:1 168:6 183:2 184:20 186:2,15 187:5 198:14,18 201:8		Habana 177:11
found 78:4 166:18 167:3,15 177:8	generality 141:6	goes 166:17 177:10 189:10 195:13		half 6:21 17:4 37:19,20 50:3
founding 59:8	generally 7:21 25:20 58:9 60:23 88:9,15 91:17 112:14 123:16 134:4 171:16 176:14 201:16	going 6:14,15,24 15:9,17 16:5 18:22 21:5 23:2 26:25 71:9 81:4 81:10 83:18 122:14 125:18 143:3 153:6 156:4 156:8 160:1,2 162:12 165:18 167:1 168:6 183:2 184:20 186:2,15 187:5 198:14,18 201:8		Hamas 105:8 112:8
four 13:9,11	Genocide 61:12,22	Golan 43:19 68:12		hand 6:24 149:20 190:6 203:16
Fourth 46:8,15	getting 100:18 196:18	good 6:8 87:6		handful 48:4
frames 128:14	Gibson 1:21 2:14 6:3 203:4,19	goods 165:18		handing 60:1 63:19 79:2 81:21 128:23
framework 184:12	give 6:14 30:22,23 65:18 92:20 103:17 109:20	governance 137:9		handled 175:6
France 122:15		governed 175:12		hands 60:13
frequency 78:12,13		governing 94:9 103:23 104:20 105:1,3,12,18 106:7,18 107:7 108:11 111:5,10 111:12,18,20,22 111:24 112:1,5 127:6,11 128:1,10		happen 160:24
front 34:9				happened 73:21 78:13 147:10
FSIA 192:4				happens 177:14
fudging 197:12,17				happy 60:12
full 33:11,15 36:15 113:24 116:19 146:6,15,21 156:11,14,15				hard 197:14
fully 203:8				Harvard 8:12,23 9:4
function 109:13 128:15 130:7 131:2				hate 98:17
functionally 131:6 131:8,9				head 39:10 109:25
functioning 137:3 201:14				heading 129:14
functions 104:23 105:21 106:24 107:1,3 108:4,24 109:10 110:18 111:7 112:8 130:4 131:11 132:12,16 134:9,25 135:3,19				health 134:15
fundamentally 44:3				heard 93:8 182:6
further 5:7,11 41:4 41:23,23 121:10 201:22 203:11				heavily 190:19
				Hebrew 17:13
				Hebron 30:24 37:22
				Heights 43:19 68:12

held 2:11 8:2 44:19	II 110:4	incorrect 126:9	interested 203:14	142:5 147:6,17
hereunto 203:15	III.15 84:9	178:17 192:6	interim 30:7 110:5	148:20 149:1,19
Hernandez 4:16	illegal 92:22 99:9	incorrectly 179:24	131:14	151:11 159:13
71:2 72:11 78:21	Illinois 70:7,12,13	187:15 189:12	international 8:12	164:8,19 166:24
79:8,9,10,14 80:1	71:9,17 73:22	192:22	9:2 10:12,20 11:3	169:24 170:4,24
88:8	74:3	independence	11:8 12:5 13:5,10	171:10 175:15
hesitate 109:5	im 184:25	114:5,13,20,23	14:9,10,13 15:8	176:23 177:1,4,8
High 54:2	immediate 137:3	independent 114:4	15:19,22,24 16:10	177:15,18,22
higher 171:21	immunities 184:25	116:22 196:25	18:18,23 23:20,21	183:24,25 184:2,4
historical 32:7,9	impliantly 173:4	INDEX 4:1	24:1 25:6 26:22	184:5 188:1
historically 104:10	174:1,6 194:23	indicate 118:3	27:12 30:3 31:14	190:15 191:12,16
history 32:3 88:1	197:10	158:2,5,8 174:20	31:25 32:23 38:6	192:3,12 201:4,21
104:17 105:12	implicitly 90:11,13	indicated 8:20	38:9,17 40:18	internationally
hold 8:9,11 36:19	impliedly 161:23	77:19 155:2	46:22 47:11,20	113:4
124:11 148:1,7,17	161:24	179:19	50:21 51:4,10	internationally-r...
Holder 96:20	imply 104:19	indicates 8:1	52:20,25 53:1,2	33:12
holding 121:2	importance 56:23	indication 125:20	53:12,22 54:9,14	internet 29:3
holds 43:6	important 170:22	139:10 149:4	54:20,23 55:1	interrogate 133:24
Holy 169:20,22,24	171:2 176:10	161:23 173:19	56:19 59:4,7,14	interrogation
170:2,5	181:1,25 183:16	indications 143:25	60:18 61:1,6	75:21,25 77:14,21
home 49:8	183:20 184:13	individual 30:2	62:25 63:4,8,10	78:16
homicides 70:18	185:25 187:15	189:16,19	63:16,24 64:13,16	intervention
hosted 25:5	189:7,16 193:6	individual's 74:25	65:1,12,14 66:11	184:23
Hotel 2:12	imprecise 192:14	individuals 27:14	66:13,21 69:4,13	introduced 34:4
hour 6:21,21 31:17	imprisoned 99:22	information 41:11	69:14,23 87:11,15	investigate 41:10
86:13	102:21,21 103:7	55:14 85:12	88:9,15,20 89:1,4	invited 144:13,16
hourly 86:14,20	103:11	informed 49:9	89:5,17,18 90:1,1	144:19,20
hours 82:24 87:3	incident 55:8 56:22	182:17	90:3,4 91:2,12	involve 54:10 55:2
huge 166:16 171:23	79:20	initial 43:4 82:8	92:7,11,17 93:2,6	66:21
Human 53:16 59:5	incidents 200:18	Initially 10:1	93:14,16,17,21	involved 18:6 24:3
59:8	include 50:9 56:16	initiated 148:15	94:22 98:3,3,14	24:6,12 29:15
hypothetical 98:1	63:4 64:7,11,15	instance 74:14	99:3,24 100:3,9	46:22 47:1,10,14
98:19 99:16	64:19,25 67:3	182:22 189:9	100:11,16,23	47:16 48:3 49:18
100:10 102:12,14	97:3 176:10 181:1	instances 53:8	101:3,5 103:16,18	50:19,20 51:5,20
102:16 103:10	185:25 189:8	137:24 169:11	108:6 110:11,14	53:3 54:12,14
hypotheticals	included 32:14	201:12	110:20 112:16,18	58:4,5 66:15 69:9
101:2	42:7 53:4 56:12	instruct 81:11	112:25 113:21	69:10 71:7 74:21
	56:18 61:1 72:14	instructed 81:13	115:9 116:2,3,7	91:5,7 95:17
	128:9 133:23	insurgents 199:15	116:13 117:6,11	108:5
	187:24	199:20,22 200:14	117:19 119:7,12	involves 87:15 91:5
I	includes 53:7 63:14	intention 65:13	119:18,24 120:3,7	involving 70:18
I.2 89:15	66:10 68:8 97:1	Inter-American	120:10 123:24	72:4
ICC 39:9,10,12,25	including 49:16	53:16 127:3	124:2,10,17,22	Iran 51:15,18
40:14 41:2,5	54:7 90:11,14	interacting 139:20	125:6,11 128:7	Iran-Azerbaijan
ICC's 39:2	124:8,8 159:14	interaction 142:12	129:15 138:16	69:12
idea 17:19 20:5	inconsistent 142:13	143:1	139:17,17,25	Iraq 114:11 122:24
41:2	158:9 176:18	intercourse 166:16	140:2 141:10	138:2
IDENTIFICATI...				
4:7				

irrelevant 141:9 196:3	94:14 97:4 101:23 104:7 111:19 120:8,18 121:2 138:19 140:1 141:15 149:4 150:11 167:21 172:18 175:15 176:13,15 181:8 182:15 190:14 201:6	Jordan 106:2 judge 186:20 judges 39:19 187:2 187:3 judgment 63:2 judicial 49:10 126:7 133:18 183:6 judiciary 178:12 June 159:16,20 160:3 junior 48:18 50:14 jurisdiction 32:23 38:9,20,22 39:25 40:15,19,25 41:12 Justice 14:25 52:21 53:13 54:2 119:7 119:18 120:3,7 justifiable 103:3 justified 92:6 93:8 93:12 98:6 justifies 99:24	know 6:19,20,22 7:3 16:21 17:8 18:5 20:3 23:2 24:5,5 26:13 27:21,22 29:17 31:21 32:10 34:3 35:2 36:12 38:7 40:5 44:2 47:3 49:15,24 50:13 52:10,24 53:10 55:18 56:14 57:16 60:3 63:21 77:20 77:22,22 79:23,25 80:8 91:12 92:23 95:10,22 96:23 97:17,18 100:3 109:19 110:1 115:8 125:1 127:16 128:25 130:16 132:21 136:23 137:11 138:6 140:3,6 141:22 143:6 144:4,11 147:25 148:13 149:18 150:4 152:16 156:14 166:17 167:24 168:5,10 168:20 169:2 171:13 172:10 174:22,22 175:7 175:19,23,25 176:18,19,19 178:3,6,24 180:21 182:6,20 184:8,9 184:16 186:5,9,12 186:12,18 187:1,8 187:9,9 191:3 193:11 195:14 196:11 201:11 knowledge 19:2 42:21 44:1,8 known 103:22 Knox 72:22 182:4 183:3 184:21 185:13,21 187:14 194:1	Kuwait 114:11 138:2,3 <hr/> L <hr/> L 6:1 label 131:19 labeled 63:20 laid 125:8 Landau 77:18,23 78:4,16 language 94:5,7,17 94:17 95:16,22 128:12,18 156:6 Languages 10:3,6 large 24:16 150:13 largely 38:5 84:3 larger 65:5,7 late 95:7 169:3 Latin 127:4 laundry 127:17 179:20 Lausanne 119:13 122:4,20 167:2,4 167:19 law 4:22 8:6,10,18 8:22,23 9:2,14 10:4,9,10,11,11 10:12,19,20 11:3 11:3,7,8,9,10,11 11:14,15,17,19,20 11:21 12:5,5,8,17 13:3,6,10 14:10 14:10,13 15:19,22 15:22,24,24 19:4 21:21 28:4 31:14 31:25 43:2 44:17 44:19 46:18,18,20 46:23 47:11,20 54:8,10,18,18,19 54:20,23 56:19 59:14 60:18 61:1 61:6 62:25 63:4,8 63:10,16,24 64:13 64:16,24 65:1,12 65:15 66:11,13,21 69:9,10 75:25 80:15 87:1,11
Israel 4:13 14:25 17:1 19:8,11 21:8 23:5,6,15 25:3 30:13 31:6 34:19 34:21 35:16 36:22 36:24 37:1,7 42:2 42:5,11,12 43:4,6 43:8,20 55:9,25 64:1 67:2,19 68:5 68:9 74:21 75:16 76:9,21,24 77:1 90:19 106:3 107:15 113:14,23 115:12 124:8 139:4,6,8 141:3,5 141:7,9 142:20,23 143:2 144:9 154:4 161:21,23 162:8 162:11 198:23 199:24	issued 168:13,16 169:2 issues 17:20 18:6 20:25 21:1,20,21 24:1,2 25:17 26:18,23 27:17,24 28:1 29:1,9,12,16 29:17,19 30:6 31:14,24,25 32:10 32:12,13,13 36:7 36:8 38:4 42:22 43:22,23 44:2 46:23 47:11,21 49:2 51:21 54:16 57:8 66:2,4,14,18 83:9,13,25 87:21 87:23,25 88:5 89:19 90:2,10,17 90:18,25 167:4 184:1 187:24	Jordan 106:2 judge 186:20 judges 39:19 187:2 187:3 judgment 63:2 judicial 49:10 126:7 133:18 183:6 judiciary 178:12 June 159:16,20 160:3 junior 48:18 50:14 jurisdiction 32:23 38:9,20,22 39:25 40:15,19,25 41:12 Justice 14:25 52:21 53:13 54:2 119:7 119:18 120:3,7 justifiable 103:3 justified 92:6 93:8 93:12 98:6 justifies 99:24	know 6:19,20,22 7:3 16:21 17:8 18:5 20:3 23:2 24:5,5 26:13 27:21,22 29:17 31:21 32:10 34:3 35:2 36:12 38:7 40:5 44:2 47:3 49:15,24 50:13 52:10,24 53:10 55:18 56:14 57:16 60:3 63:21 77:20 77:22,22 79:23,25 80:8 91:12 92:23 95:10,22 96:23 97:17,18 100:3 109:19 110:1 115:8 125:1 127:16 128:25 130:16 132:21 136:23 137:11 138:6 140:3,6 141:22 143:6 144:4,11 147:25 148:13 149:18 150:4 152:16 156:14 166:17 167:24 168:5,10 168:20 169:2 171:13 172:10 174:22,22 175:7 175:19,23,25 176:18,19,19 178:3,6,24 180:21 182:6,20 184:8,9 184:16 186:5,9,12 186:12,18 187:1,8 187:9,9 191:3 193:11 195:14 196:11 201:11 knowledge 19:2 42:21 44:1,8 known 103:22 Knox 72:22 182:4 183:3 184:21 185:13,21 187:14 194:1	Kuwait 114:11 138:2,3 <hr/> L <hr/> L 6:1 label 131:19 labeled 63:20 laid 125:8 Landau 77:18,23 78:4,16 language 94:5,7,17 94:17 95:16,22 128:12,18 156:6 Languages 10:3,6 large 24:16 150:13 largely 38:5 84:3 larger 65:5,7 late 95:7 169:3 Latin 127:4 laundry 127:17 179:20 Lausanne 119:13 122:4,20 167:2,4 167:19 law 4:22 8:6,10,18 8:22,23 9:2,14 10:4,9,10,11,11 10:12,19,20 11:3 11:3,7,8,9,10,11 11:14,15,17,19,20 11:21 12:5,5,8,17 13:3,6,10 14:10 14:10,13 15:19,22 15:22,24,24 19:4 21:21 28:4 31:14 31:25 43:2 44:17 44:19 46:18,18,20 46:23 47:11,20 54:8,10,18,18,19 54:20,23 56:19 59:14 60:18 61:1 61:6 62:25 63:4,8 63:10,16,24 64:13 64:16,24 65:1,12 65:15 66:11,13,21 69:9,10 75:25 80:15 87:1,11
Israel's 142:9 Israeli 18:7 21:23 26:9,11 35:7 36:19,21 37:4,5 62:13 67:17 77:10 77:17 142:17 162:5 199:15 200:11 Israeli-P.L.O 67:13 Israeli-Palestinian 158:20 193:20 Israelis 24:20 28:2 143:19 issue 27:6 31:4 32:14 35:9,15 36:6 38:17 39:7 39:16 40:21,24 41:4 42:24 49:4,5 50:5 55:6 56:16 57:4,5,13 70:20 75:14,18 77:18 79:14,19 83:17 85:11 87:14,17 88:1,3 89:3,6 90:14 91:11 93:1	Italy 122:15 items 163:2 <hr/> J <hr/> J 6:1 jail 103:13 James 171:19 172:14 Jenin 199:23 200:3 Jericho 106:21 Jerusalem 19:16,18 20:7,9 21:12 29:24 John 1:13 2:11 4:3 4:9,11,19 202:6 202:15 203:7 204:5,21	Jordan 106:2 judge 186:20 judges 39:19 187:2 187:3 judgment 63:2 judicial 49:10 126:7 133:18 183:6 judiciary 178:12 June 159:16,20 160:3 junior 48:18 50:14 jurisdiction 32:23 38:9,20,22 39:25 40:15,19,25 41:12 Justice 14:25 52:21 53:13 54:2 119:7 119:18 120:3,7 justifiable 103:3 justified 92:6 93:8 93:12 98:6 justifies 99:24 <hr/> K <hr/> Karen 1:21 2:14 6:2 203:4,19 keep 101:14 103:4 103:4,6 keeping 99:25 keeps 67:19 kept 101:15 103:12 key 117:20 184:7 192:9 keys 28:14 killed 55:9 kind 26:16 41:20 56:9 91:18 98:13 101:25 109:13 132:4 142:5 160:1 163:20,22 165:14 kinds 24:2 106:25 142:25 Kletter 120:14,18 121:3 126:16 Klinghoffer 180:3 Knesset 142:22 knew 83:11 183:13	know 6:19,20,22 7:3 16:21 17:8 18:5 20:3 23:2 24:5,5 26:13 27:21,22 29:17 31:21 32:10 34:3 35:2 36:12 38:7 40:5 44:2 47:3 49:15,24 50:13 52:10,24 53:10 55:18 56:14 57:16 60:3 63:21 77:20 77:22,22 79:23,25 80:8 91:12 92:23 95:10,22 96:23 97:17,18 100:3 109:19 110:1 115:8 125:1 127:16 128:25 130:16 132:21 136:23 137:11 138:6 140:3,6 141:22 143:6 144:4,11 147:25 148:13 149:18 150:4 152:16 156:14 166:17 167:24 168:5,10 168:20 169:2 171:13 172:10 174:22,22 175:7 175:19,23,25 176:18,19,19 178:3,6,24 180:21 182:6,20 184:8,9 184:16 186:5,9,12 186:12,18 187:1,8 187:9,9 191:3 193:11 195:14 196:11 201:11 knowledge 19:2 42:21 44:1,8 known 103:22 Knox 72:22 182:4 183:3 184:21 185:13,21 187:14 194:1	Kuwait 114:11 138:2,3 <hr/> L <hr/> L 6:1 label 131:19 labeled 63:20 laid 125:8 Landau 77:18,23 78:4,16 language 94:5,7,17 94:17 95:16,22 128:12,18 156:6 Languages 10:3,6 large 24:16 150:13 largely 38:5 84:3 larger 65:5,7 late 95:7 169:3 Latin 127:4 laundry 127:17 179:20 Lausanne 119:13 122:4,20 167:2,4 167:19 law 4:22 8:6,10,18 8:22,23 9:2,14 10:4,9,10,11,11 10:12,19,20 11:3 11:3,7,8,9,10,11 11:14,15,17,19,20 11:21 12:5,5,8,17 13:3,6,10 14:10 14:10,13 15:19,22 15:22,24,24 19:4 21:21 28:4 31:14 31:25 43:2 44:17 44:19 46:18,18,20 46:23 47:11,20 54:8,10,18,18,19 54:20,23 56:19 59:14 60:18 61:1 61:6 62:25 63:4,8 63:10,16,24 64:13 64:16,24 65:1,12 65:15 66:11,13,21 69:9,10 75:25 80:15 87:1,11

88:9,15,20 89:6 89:17,18 90:1 91:12 92:7,17 93:2,6,14,16,21 94:22 95:2,7,10 95:14 96:11 98:3 98:3,14,16 99:3 99:14,24 100:4,9 100:11,16,23 101:4,9 102:24,25 103:17 112:14,16 112:19,25 116:2 118:10,11 126:23 129:7,15 133:15 148:20,25 149:5,6 149:18,19,23 150:8,10 170:24 171:10 175:16 176:23 177:1,1,4 177:6,7,8,14,15 177:17,18,20,22 181:11,23,25 183:25 184:2,4,14 186:1 188:17 190:15 191:5,7 192:3,10,11,12 195:20 lawful 92:17 96:1,4 laws 9:9 21:22 54:22 61:10,15 90:1 93:15,17 94:23,24 95:1,6 95:24 96:16 99:6 99:10,12 133:1,4 lawyer 27:3 45:5 47:7,22 53:6 97:5 97:9,12,12 181:11 181:16 lawyers 17:18,23 17:24 18:4,7,9,10 19:3 25:14,18,19 25:25 26:5,9,11 26:21,24 27:11,20 31:4 34:19,21,25 35:4,7 37:8 52:21 172:17,21 lead 48:14,17 50:13	50:15 55:11 192:7 192:19 Leading 199:7 League 15:11 88:4 learned 11:13,21 18:25 83:21 learning 18:14 leave 10:16,22,22 10:23 12:11 Lebanon 55:8,10 lecture 30:22,24 31:12 32:5,18 33:3 34:10 37:22 38:3,8,12,16 40:14,16 lecturing 32:1 led 19:6 67:25 legal 10:8 12:9 17:20 24:18,21,25 25:17 26:23 27:5 27:17,23 48:5,12 54:11 89:7 93:9 96:22 97:3,16,17 97:23 98:2,4,24 98:25 114:15 legality 79:15 92:19 legislation 135:21 135:22 136:6,21 137:1,6 Legislative 177:25 legitimate 103:2 114:25 length 184:8 let's 8:25 13:6 20:6 23:4 46:21 51:12 54:13 61:2 70:5 114:10 125:25 148:12 153:10 168:12 letter 131:20 letters 131:19 132:7 level 70:7 90:3 108:6 110:11,14 110:20 112:25 113:9,12 115:24 116:15 117:10	137:16,20 139:21 140:3 143:20 Lexis 181:6 LIBERATION 1:7 204:4 Libration 72:22 105:5 106:9,15,17 107:14 182:5 188:4 life 134:16 likelihood 75:14 limit 63:6,7 limitations 110:8 limited 9:16 48:23 109:7 124:20 198:23 200:9 line 180:19,23 204:6 lines 112:25 113:3 list 52:24 53:1,7 57:20,23 60:17,22 61:3,8,14 62:2,21 62:22 63:7 64:8 64:12,19,21 65:2 65:19,21,22 66:10 66:17 67:3 82:4 107:3 127:17 132:19 172:15 179:20 listed 51:6,12 55:1 63:12 73:22 127:20,22,24 128:1 listen 6:16 190:4 listing 90:8 Literatures 10:3,6 litigated 54:25 litigation 27:15 46:24 47:2,4,7,23 48:22 50:19,21 51:4 52:6,25 55:17 58:5 91:4,8 little 6:15 23:3 121:10 live 36:21 living 44:11 LLP 3:2	local 19:3 located 23:22 location 79:20 London 23:19,22 51:13 52:6,7 53:4 54:14 long 23:2 31:16 62:8,9,14 71:7 82:23 111:22 longer 37:1,5 195:13 look 65:22 94:4,11 95:19 115:21 116:24 119:6 125:25 127:15 138:2 179:14 looked 24:10 83:9 85:7 119:11 174:2 182:19 190:13 looking 20:19 91:1 197:5 looks 64:9 65:18 184:5 Lucy 3:4 6:10 Lucy.McMillan... 3:6 lunch 121:9,14	148:4 150:20 making 32:21 33:18 53:10 86:2 119:21 155:5,10 155:12 157:6 male 77:8 Malvo 70:16,20 71:24 mandate 15:10 32:4 manner 126:9 map 143:8 158:13 158:16 160:6,7,9 160:18 161:16 162:3 164:11 173:18 193:19 194:15 maritime 51:13 52:7 54:14 MARK 1:4 204:4 marked 6:25 7:1 59:25 60:2 63:18 79:1,2 81:20,21 128:22,23 marriage 203:13 Massachusetts 45:9,10 48:5,8 Master's 8:11 material 84:23 96:14,22,25 97:1 97:3,8,11 materially 96:5,10 materials 84:1 matter 7:12 41:7,9 41:14 88:23 89:9 89:12,22 97:16 109:9 111:7 118:20 136:2 137:12,15,18 144:3 147:25 171:23 185:17 192:25 194:9 203:14 matters 32:24 63:16 90:4 91:12 McMILLAN 3:4 6:10
---	---	--	---	--

mean 13:12 15:16 15:17,18 16:2,20 17:16 19:4 21:3,7 25:10 28:24 29:20 32:13,13 36:20 40:4 41:8,16 43:10 44:10 46:14 46:19 47:3 51:7 54:15 55:25 57:23 58:22 59:19 64:15 67:25 68:1,19 72:1 78:12 82:10 82:16 83:9 85:1 86:3,5 87:21 89:11 93:18 94:11 94:24 95:15,20 96:7,17 100:6,8 100:19 101:20 104:9,16 105:23 109:9,11 111:19 113:13 114:6,9 115:15 117:25 119:6 124:5,12 125:14 129:2 130:12 131:6,18 136:15,22 137:16 137:23 139:2,23 140:17,19,21,23 140:24,25 141:2,5 144:15 146:9 147:1 150:10 153:17,22 154:12 154:21,23 156:14 156:15 157:23 160:20 162:7 165:14 166:15 168:3,5 169:23 170:13 172:17 173:17 175:16,22 176:1,13,18 177:16 179:12,18 180:15,18,19 181:21,22 182:2 186:2,9 190:21 191:15 192:13 194:14 195:12 197:18 201:3,11	meaning 157:4,10 157:12 means 96:10 102:4 114:13 132:3 143:22 150:14 185:10 200:17 meant 43:21 130:9 measures 159:6 mechanism 69:17 meet 131:24 183:8 192:1 meeting 19:3 21:11 27:11 82:23 meetings 21:19 22:8 26:15,21 meets 126:2,8 member 45:14 59:8 59:23 142:22 144:15,18,19 145:23,25 146:6 146:10,12,15 150:3 156:8,15,16 165:1,2,4 166:1,4 members 133:21 149:25 159:10 membership 32:21 33:7,10,12,15,19 45:19 46:11 113:18,24 116:19 145:25 146:7,21 147:8,11 148:4 152:9,18,21 159:14 memory 17:8 mention 34:2 52:19 56:12 72:2 86:5 122:20,23,25 123:4,17,19 164:21 178:18,19 182:18 193:11 mentioned 28:3 30:7 34:6 61:9 65:11 69:11 72:6 73:13 112:8 123:14 128:13 142:9 144:11 152:16,17 157:18	158:6,12 167:19 170:11 177:19 178:15 181:4 mentioning 178:21 mentions 122:21 123:2 merely 147:25 Merit 203:20 met 20:8 21:15 82:7 82:9 129:22 189:4 methods 77:14 78:16 Middle 12:18 13:4 13:7,13 14:7 16:13,19 24:4,15 42:18 43:24 45:2 55:2 58:1 59:18 62:3 63:13,14,16 64:13 65:20,23 66:1,7,14,15,17 66:22 67:6 87:19 87:22 89:19,23 90:2,10,17,25 91:5,5 military 32:24 55:7 56:20 199:25 Miller 3:9 80:24 mind 142:19 143:9 179:15 minds 141:15 mine 7:9 minimize 188:23 minor 47:17 48:20 minute 7:2 63:21 125:5 mirky 197:22 missed 21:25 64:9 64:14,15,17 mission 145:3,4,6,8 145:9,9 149:8,10 149:10 154:14,14 154:23,25 155:6,7 157:13 missions 196:23 mistreated 75:20 77:21 mistreatment	75:15 77:6,24 78:6 misunderstanding 186:7 mixed 120:13 modern 173:8 moment 32:11 60:3 134:12 162:8 176:20 money 102:8 monitored 55:17 Monopoly 9:11 61:11,19 Montevideo 118:2 118:14,15,25 119:11,20 120:16 125:8,12,25 126:2 126:6 127:2,19 128:19 130:10 137:17 171:2,3 189:11 morning 6:8 mortar 55:9 Moscow 8:21 9:1 motivations 154:8 move 52:8 159:3 moving 50:22 multiple 36:10 37:18 murder 95:3 99:13 MURPHY-JOH... 3:11 60:7,11 mutual 162:17	nation 16:3,7 140:20 national 103:23 106:8,10 120:21 120:23 123:11 nationalities 34:12 nationality 31:5 35:10 120:25 121:3,5 123:4,5,8 167:20 nationality's 167:25 nationals 123:9 nations 15:11,12,12 32:16,17,22 39:8 88:4,4 107:18 113:15,18,24 139:7 142:8,10 145:5,22 148:5,24 152:11,12 153:2 154:5,24 157:14 169:18 185:4 189:1,13,23 nature 109:17,22 near 101:1 necessarily 104:14 125:20 139:12 144:13 153:22 157:23 175:19 176:1 187:21 193:12 necessary 111:23 115:2 118:8 129:25 191:1 need 6:19,21 44:12 111:18 117:20 126:16 137:16,21 150:17 169:6 191:13 193:10 needed 83:10 165:19 185:19 needs 184:19 negate 130:19 165:24 190:2 negative 153:8,22 157:25 158:1,4 negotiate 143:3,5,7
---	---	--	---	---

143:19,22 negotiated 37:3 negotiation 35:16 143:2 negotiations 24:19 67:13 68:2 153:20 163:1 neither 188:25 Netanyahu 142:21 Netanyahu's 162:19 never 39:16 40:6 49:20 52:15 70:10 181:23 new 1:1 3:5,5 40:12 40:13 41:3 74:19 167:23 182:9 186:17,18 187:2,2 187:4,10 191:19 191:24 204:2,2 nine 153:10,10 nongovernmental 155:4 nonlawyers 35:4 nonmember 145:12 145:17,19 146:3,5 148:10 151:14,22 152:3 153:16 154:17 155:13,18 155:24,25 156:7 156:11,19,20 157:4,9 169:17,23 170:8,15 nonrecognition 201:19 norm 115:25 116:4 116:7,13 normally 107:1 132:5 norms 54:22 93:19 103:18 North 2:12 Notary 2:15 6:3 202:21 203:4,20 204:25 noted 53:8 201:25 notes 184:24	Notice 2:13 noticed 53:4 notion 163:13 November 84:19 142:6 nuances 111:2,3 number 28:24 38:4 50:21 51:6 55:8 150:13,13,15,19 151:5,20 152:1 170:13,14 197:14 197:15,22 numbers 107:20 Numeral 84:9 89:15 <hr/> O <hr/> O 6:1 O'TOOLE 3:10 4:4 26:25 50:22 81:4,10 82:16,20 83:18 100:17,24 101:17 102:11,15 156:4 186:15,20 186:24 187:5 196:7 198:1,4 199:5,9,13 201:22 oath 5:15 202:8 object 27:1 81:5 83:19 101:17 156:5,22 186:16 187:6 Objection 199:4 objections 5:8 obligations 15:25 16:1 observer 145:4,9 145:12,17,19,21 146:4,5 148:10 149:10,10 151:14 151:22 152:3 153:16 154:14,14 154:17,24,25 155:1,3,3,5,6,7,13 155:19,25 156:1,7 156:11,19,20 157:1,4,9,13	169:17,23 170:8 170:15 obtained 37:4 obvious 123:20 obviously 24:3 64:17 138:7 193:23 occasion 77:20 78:5 78:8 165:16,17 166:4,8 occasions 28:24 50:6 occupant 137:25 occupation 19:5 21:21 28:5 43:2,7 43:11,13,20 76:1 77:15 105:25 106:4,4 112:4 114:10 132:3 137:21,24 168:15 168:18 198:22 200:17 occupied 114:11 138:2 occurred 32:25 79:20 99:14 occurs 165:15 October 1:15 2:6 202:8 203:16 204:5 offense 77:8 offered 100:19 offering 87:9,12 offhand 12:25 56:20 91:23 94:12 office 24:18,22,25 25:9,10,15,18 26:9,22 27:10,12 27:19 28:19 29:4 48:4,5,12 officer 5:14 officers 98:15 102:18 103:10 official 39:11,15 175:18 officials 98:8,10,21 99:17	oh 50:25 54:2 112:7 121:18 129:10 134:11 163:20 171:19 175:25 199:18 Ohio 1:14 2:13,15 6:4 9:20 10:20 11:22 12:3 44:22 45:11,14,18 48:19 58:24 202:3,21 203:2,5,20 okay 6:14 7:6,10,14 7:17,24 8:5,9,13 8:16,18,24 9:3,6 9:12,15,18 10:13 10:15,22 11:4,13 11:22 12:2,6,10 12:13,19 13:2,12 13:15,18 14:3,11 15:1,1,16,23 16:2 16:12,12 17:1,3,5 17:13,15,21 18:2 18:7 19:9,11 20:15 21:14,24 22:4,7,11,20,23 23:1,4,10,21 24:3 24:14,21,24 25:2 25:8,12,25 26:4,8 26:13,19 27:16,16 27:24 28:7,15,22 29:7,12,17,23 30:1,9,11,20 31:1 31:9,11,11,21,24 32:6,12 33:1,5,11 33:23 34:2,8,9,17 35:6,9,21 36:4,18 37:13 38:1,7,15 38:25 39:2,9,18 39:23 40:9,14,20 40:23 41:15,18,22 42:1,4 43:1,10,21 44:4,15,15 45:5,7 45:11,17,21,23 46:3,5,8,13,17,24 47:9,13,19,24 48:21,25 49:4,12 50:2,7,12 52:1,18	52:24,24 53:12,12 53:19 54:1,6,21 55:6,11,19 56:3,7 56:15,25 57:16 58:4,19 59:11 60:1,6 61:2,7,9,15 61:18,21 62:2,14 62:17,21 63:11,19 64:10 65:2,6,10 65:24 66:6,9,25 66:25 67:11,23 68:7,14,23 69:18 69:21 71:9,21,24 72:6,24 73:3,22 74:2,5 75:10,22 76:20 77:4,22 78:3,15,20,23 79:2,9,23 80:1,4,9 80:19 81:17,21 82:12,25 83:7,16 84:1 85:8 86:1,14 86:19 87:2,5 88:17,22 90:7,13 90:16 91:3,9 92:1 92:5,15 93:4,11 94:2,8,13,16,21 95:5,10,18,24 96:4 97:21,25 98:19 99:2,7,15 99:15 101:9,12 103:9,16,20,20 104:6,13,20,24 105:7,9 106:6,10 107:9 108:3,9,17 108:22 109:1,7,14 110:2,7,12,16,21 111:2,9,13,15,15 112:7,11,14,22 114:2,19 115:4 116:14,21,21 117:4,8 118:9,13 119:3,17 122:1,10 122:19 123:23 124:9 125:11 126:1,11 127:19 128:11,23 129:8 129:12 130:8,25
---	--	---	--	--

131:4,12 132:6,14 132:22,24 133:3 133:14,20 135:14 135:18,20 136:25 137:13 138:8,11 139:9,12,15 141:14,19 143:24 144:21 145:16,19 146:14 148:19 150:6 152:5,14 153:3,9,14 155:8 155:20 157:3,16 158:6,16,25 160:5 160:17 161:11,14 161:16,20 163:7 164:6 166:22 167:25 168:7 169:5,12 170:13 170:17 171:6 172:14,24 174:5 174:25 176:3,7,21 177:23 178:3 180:2,24 181:24 182:8 183:2,13 184:20 187:13 188:2 191:18 195:4 196:4,4,18 197:3,24 omitted 57:24 once 24:18 34:8 82:11,12 115:25 116:10 139:20 ones 15:15 29:20 30:6 57:25 61:13 65:24 66:1 73:14 94:12 123:21 oOo 3:14 4:23 5:21 oops 65:18 open 31:20 35:1,3,5 68:1 operate 172:4,5 operation 149:23 198:25 199:1,10 operations 199:25 opining 111:15 191:20 192:25 opinion 39:14	40:15,20,24 52:12 58:17 67:8 75:12 75:17 77:12 78:17 81:14,14 85:18 97:2 101:12,13 102:23 103:8,15 110:16 112:15 113:17 114:3 116:14 117:23,25 119:25 120:3,6 130:2,21 131:22 137:15 153:19 155:20 157:3 166:1,3 171:6 172:18,21 174:6 176:7 179:17 181:4,13 182:3,15 182:21 183:3,14 183:15,23,25 184:8,14 189:10 192:8,15,20,21 193:1,3,5 195:22 197:13 200:14,25 opinions 28:25 29:7 120:1 126:7 187:4,22 195:2 opposed 44:7 69:4 74:13 88:17 113:23 142:22 177:6,7 190:11 194:22 opposite 184:14 195:5 options 35:22 oral 53:20 73:14 97:5 order 84:2,16 127:4,17 130:6 159:3 organization 1:7 59:9,17 72:22 73:1 97:6 105:6 106:9,16,17 107:14 145:24 146:12 150:5 152:20,24 153:1 155:4 156:17,24	182:5 188:4 204:4 organizations 59:2 59:12,14,19,20,22 organizing 25:15 oriented 184:18 Oslo 4:12 63:25 67:1,18,25 107:10 107:13 110:4 Ottoman 88:2 105:15 122:22 outcome 52:9 56:7 56:10 75:10 76:6 79:24 203:14 outside 31:22 35:18 35:23 43:13 51:9 69:20 84:24 99:8 135:13 138:3 150:8 outstanding 32:10 32:12 40:9 overall 73:19 131:22 132:3 158:19 159:11 200:16 overlap 108:23 109:14,18,22 overlapping 110:21 110:24 overridden 177:21 oversight 134:14 overwhelming 148:4 150:23 152:1 175:5 overwhelmingly 179:7	PA's 106:23 108:18 page 4:2,7 67:9,9 67:10 84:8 85:5 193:11 204:6 pages 62:11,16 pal 120:25 Palestine 1:7 14:25 15:11 19:19 30:2 32:15,20 33:18 35:20,25 36:1 38:5,19 39:6,21 40:17 41:16 62:5 62:12 83:15 84:4 85:14 86:3 87:16 89:2 90:5 94:10 103:24 104:2,4,6 104:8,12,15,17,19 105:1,4,5,14,22 105:24 106:7,9,17 107:2,14 108:6 110:11,20 111:6 111:17 112:12 113:20 115:12 116:14,23 117:1,5 117:9,16,23 118:1 118:8 119:8,11,14 120:8,15,19,22,23 121:1,4 122:3,20 122:24 123:24 126:2,17 129:22 129:25 137:23 141:11 142:20,24 143:10,13,16 144:7,24 145:4,8 145:12,16 146:15 146:20 147:3,7,17 148:5,14,15 149:8 150:12,16 151:10 151:14,22 152:2,2 152:10,17 153:15 153:18,20,23 154:3,6,10,13,15 154:16,23 155:3,9 155:11,13,18 156:25 157:7,15 157:24 158:2,3,22 159:19,23,25	160:1,16,19,21 161:2,13,18,24 162:6,8,12 163:14 164:9,19,24 165:3 165:11 166:6,25 167:5,6,7,20,21 167:22 168:2,17 168:25 169:9,15 173:5,9,16,20,23 173:25 174:1,4,6 174:13,17,18 175:20,24 176:2,5 176:9,11 178:1,4 178:16,22,25 179:17 181:5,8 182:5,5,21 183:18 184:6 185:10,16 186:3 187:20,20 188:1,4 190:7,14 190:22 191:2,25 194:23 195:1,11 196:12,23 197:7 198:7 200:22 201:1,7 204:4 Palestine's 157:13 182:3 185:3 200:9 Palestine-Israeli 65:25 Palestinian 18:10 19:16 21:15 22:1 22:9 25:25 26:3,5 31:5 33:6 34:12 35:7,9 39:24 41:3 56:3 59:5,8 72:22 72:25 77:8 87:22 90:14 100:20 103:22,23 104:25 106:8,10,11,15 108:1 110:8 118:11 130:22,23 131:23 132:11,15 132:25 133:15 134:8,19,21 135:2 135:15 136:20 142:18 148:8 159:13 160:12,15 161:22 162:22
--	--	--	--	--

168:11 182:16 185:6 198:6,12 200:6,15 Palestinians 24:20 28:2 35:17,23 36:19,20 37:3 133:12,24 143:19 panic 91:19 Paquete 177:10 paragraph 67:12 84:9 89:15 paragraphs 95:23 parceled 137:19 Parent 143:6 Park 3:4 part 13:15 30:13 38:22 57:13 96:19 125:4,9 131:20 164:8,18 166:24 167:2 189:23 201:4 participate 53:9 participated 52:21 particular 24:14 35:17 42:24 56:22 57:14 58:13 65:9 89:18 94:4,11 111:16 115:1 124:12 125:18,24 127:7,12 138:19 149:2,2,3,24 162:24 166:7 167:4 175:18,18 199:22 parties 5:4 29:22 54:15 57:9 88:6 107:13 122:10 159:7 163:1,6,24 164:1 203:12 parts 24:8 130:14 130:15 131:9,12 131:16 party 55:18,18,22 56:1,4 57:14 122:16 167:12,14 passed 150:20 passport 168:1,4	168:11 passports 167:6,7 167:21,23 168:12 168:25 payroll 99:23,25 100:4 101:16,21 102:1,4,22 103:6 peace 122:7 149:24 pending 8:3,4 79:25 152:6 175:10 176:12 183:22 people 22:24 34:24 36:25 44:10,14 77:5 99:25 100:4 103:4 108:1 123:8 136:16,16,20 167:6 179:19,21 184:9 198:14 percentage 140:6,7 140:7 percentages 78:1 performance 55:15 performance-bas... 193:19 period 32:4 71:21 105:19 106:6 122:3 132:25 134:10 168:8 198:8,18,21,24 199:21 200:7 201:18 permanent 119:7 120:2 129:16 193:19 perpetrate 98:11 98:22 perpetrated 102:19 person 49:7,9 74:7 75:15 77:24 78:5 92:9,10 101:21,21 101:23 102:4,7 personal 49:13 personnel 109:15 109:22 110:22 persons 75:19 77:19 123:5	perspective 20:8,10 persuaded 183:6 persuasive 181:8 phase 159:4,5,8,10 phases 159:2 physical 75:14 77:6 78:5 physically 74:4 picked 12:7 picture 180:22 pile 102:8 place 8:1 plaintiff 82:10 plaintiff's 6:25 60:2 79:3 81:22 82:3 88:13 103:21 121:5 128:24 plaintiffs 1:5 3:3 6:9,11 plan 98:10,22 planned 102:18 play 44:2,5 played 90:3 playing 18:19,20 please 151:18 164:15 PLO 95:9,17 106:15 107:14,25 108:4,5,9,19 109:2,23,25 110:17,19 111:4 135:9,11,20 136:5 136:21,25 137:5 137:14 143:4,4 183:8 185:3 188:23 189:1 PLO's 108:17 110:13 point 10:15 12:13 14:3,19 27:1,8 33:6,8 36:22 37:6 38:24 81:5 119:13 121:11 139:24 151:15 177:17 184:13 187:15 188:19,22 198:19 201:21	points 20:21 21:1 police 132:20 133:9 198:13 policies 29:15 policy 29:12,18 30:6 185:2 political 10:4,7 37:7 98:13,23 99:19 136:9 154:7 157:20 188:23,25 190:5 population 91:20 108:13 127:10,11 127:22 129:17 130:23 133:21 134:21 135:16 140:7 Porter 3:2 6:11 portion 131:20 ports 51:18 posed 41:8 position 8:1 9:20 9:22 10:25 97:15 103:22 104:24 112:12 126:12 138:13 169:8 170:17 173:8 174:13 176:3 177:12,24 178:12 179:3,11 184:14 185:21 187:14 189:23,25 190:2,3 190:12 191:6 positions 8:25 175:13 possibilities 160:6 possibility 38:8 160:12,18 173:23 possible 26:17 28:16 57:23 64:14 86:3 141:19 160:9 162:1,6 possibly 159:14 power 57:5,7 133:6 133:8,14,20 137:1 137:6 powers 119:15	137:9,25 143:12 158:18 159:18 201:16 practical 88:14,18 89:15,16 91:4 190:6 practically 140:19 140:23,24 practice 45:24 46:18,19,20,21 91:2 115:7,8,13 115:16,19,22 127:15 139:23 140:2 167:18 170:19,21 171:1 171:15,25 175:22 176:18 179:5,6,6 191:12,16,17 196:22 197:5 200:19 practices 54:22 75:25 preamble 94:7,17 95:16,20,23 preambles 94:5 precedent 181:17 186:13 precedents 186:19 precise 22:18 192:25 precisely 109:19 111:7 prejudging 104:7 premise 156:13 prepare 7:14,19 16:17 60:20 65:6 83:7 84:2,17 prepared 60:18,24 60:25 82:1,25 83:5,11 159:20 160:24,25 197:13 preparing 82:14 83:4 84:24 85:7 prerogatives 146:8 present 32:7,10 43:4 75:6 79:10 80:10 82:9 117:2
---	---	--	--	--

135:7 142:3 162:8 191:20 193:6 presentation 53:20 presented 73:20 195:12 presently 88:6 104:18 118:1 150:1 presidential 51:24 pressure 154:3 pressuring 144:8 presumably 100:5 102:5 presumed 163:3,5 163:7,18 presuming 163:15 pretty 100:18 prevent 200:10 preventing 93:24 previous 28:4 154:19 pri 171:24 primarily 23:24 35:8 44:18 46:18 46:24 49:1 69:1 108:5 primary 38:14 119:13 121:2 principal 47:22 principles 29:21 30:10 134:14 142:16 143:1 161:21 162:13 184:4 prior 68:14 152:10 prioritization 171:25 172:7 prioritizing 171:9 prison 100:5 101:21 102:4,6,8 102:10 privilege 27:6 privileged 81:12 probably 14:5 44:1 49:21 50:3,8,13 69:25 70:10 80:20 115:25 125:1	132:23 134:11 171:21 problem 78:2,9 procedure 26:16 28:16 138:25 proceeded 41:13 proceeding 56:9 60:19 proceedings 69:8 76:15 process 83:3 119:16 produce 9:6 produced 77:19 product 26:15 81:8 professional 44:16 58:19,22,25 professor 6:8 8:2 9:23,25 14:12 44:19,21,24 49:22 51:3 81:7 87:9 121:17 151:17 169:15 183:5 196:11 198:5 profile 75:19 77:4 77:12,13,13,20 program 8:16 prohibited 95:8 projects 24:6 prominent 200:4 promise 188:2 promote 143:13 159:12 promoting 160:15 160:18 174:2 promotions 103:11 103:13,17 pronounced 118:15 pronouncements 190:5 pronouncing 183:7 proportion 77:23 proposed 180:21 proposition 195:10 prosecute 133:20 prosecuted 95:1 prosecutes 39:13	prosecution 70:25 prosecutor 39:4,9 39:20,22 40:20,23 41:9,13 prosecutor's 41:12 prospect 24:19 protect 127:4 protest 71:8 proudly 188:22 provide 52:11 72:12 75:7,9 86:19 100:5 provided 34:4 52:11 58:16 73:24 74:9 78:20 83:23 88:7 97:13 198:12 provides 125:15 providing 74:13 86:9,16 147:5 183:21 184:3,11 193:3 provision 123:10 provisions 167:19 public 2:15 6:3 15:21 31:20 35:1 35:3,4 78:14 91:19 185:2 202:21 203:5,20 204:25 publications 4:10 60:17,23 61:1 62:23 63:7 64:8 64:12,19 65:20 67:3 82:4 publish 61:15,18 78:12 published 14:21 62:5 182:23 punitive 125:19 purpose 10:23 17:15 19:12 23:17 29:6 82:14 98:13 98:23 99:20 purposes 7:19 60:18 104:1 111:6 136:2,2 183:8 192:4	pursuant 2:13 pushed 41:4,4 put 40:21,24 72:15 95:22 97:4 99:16 100:14 119:10 147:25 148:7,16 154:3 putative 115:8,9 125:19	163:9 quote 184:21
R				
R 3:1,3 raised 83:10,13 raises 91:11 Ramallah 24:23 25:16,19 26:10,22 rate 86:14,15,20 reached 40:6 116:15 117:10 reaction 80:8 read 100:25 129:2 129:12 179:25 183:2 184:20,21 188:20 191:22 193:10 202:7 readers 179:22 reading 14:16 15:2 15:4 16:14,23 19:7 44:8 62:19 reads 67:16 real 18:19,20 really 27:22 32:2 41:7 54:16 55:13 56:13 73:20 89:3 94:12 103:8 111:7 113:4,13 115:13 117:20 118:7 124:13 127:15 131:10 136:2 150:17 165:23 166:10 172:16 184:17 186:5 realm 84:25 136:9 149:23 150:8 reaps 67:19 reason 96:18 165:19 187:16 reasonable 97:17 141:15,16,18 reasoned 179:16 195:2 reasoning 162:1 180:20 193:9 reasons 95:15				
Q				
qualification 157:4 qualified 45:5 73:7 73:15 76:2,5 98:14 155:24 181:11,16 qualifier 157:9 qualifies 117:9,11 qualify 90:8 quantitatively 109:6 quartet 159:10,10 question 5:9 6:17 6:17 27:17 51:18 82:21 83:14 85:24 87:15 90:22 102:12 125:15 138:24 144:24 150:11 151:18,19 151:20 156:5,14 162:14,22 164:4 164:15 178:7,22 185:12 186:22,23 191:15,15 questionable 128:8 questions 6:16,18 27:7 198:2 201:23 Quigley 1:13 2:11 4:3,9,11,19 6:8 51:4 81:7 87:9 121:17 151:17 169:15 183:5 196:11 198:5 202:6,15 203:7 204:5,21 quite 85:12 123:20 124:15 145:13				

154:1,8 157:20 recall 15:4 22:12 26:4,8,14 28:12 35:6 65:16 68:23 69:19 70:3,22 71:5 74:8 76:4,6 76:11 85:6 91:23 94:13,16,17 95:13 118:18 125:9 172:23 188:18 198:9,15 recap 44:15 receive 86:21 receiving 86:16 recess 51:2 87:8 121:14 169:14 196:10 recitation 193:17 recognition 138:14 138:18,18,22,23 138:24 139:4,8,9 139:13 140:16 141:23 142:3,11 142:18 143:13 144:1,2,6,7,12 145:15 151:7 158:7 159:13,22 160:16,19 161:1,4 162:18 174:3 185:11,16,23 186:4,8 188:22,25 190:21 192:8,9 196:13,16 197:7,9 201:3 recognize 7:6 79:3 81:22 129:3,4 139:1 145:12,13 156:23 159:19,22 161:17 176:25 179:12 185:5,10 200:22 201:12 recognized 114:25 118:17 119:14 156:20 168:2 169:24 185:4 192:1 recognizes 173:4	173:16 recognizing 158:10 161:23 recollection 22:18 42:2 188:8 recommendations 57:8 record 7:1 51:3 59:25 63:18 79:1 81:20 121:13 128:22 202:10,11 203:9 recruited 25:20 reduce 159:6 reduction 161:15 REF 1:22 refer 56:22 104:25 reference 189:18 referenced 84:5 referred 110:3 118:2 123:14 125:22 147:12 194:14 199:1 referring 56:19 65:3 84:10 95:2 104:3 119:18 123:16 132:7 171:17 189:11 192:8,9 refers 68:8 123:15 reflect 189:15 190:7 reflected 193:9 reflection 200:8 refugees 29:25 refusing 147:21 refuting 191:3 regard 105:21 140:17 149:24 154:22 157:15 regarded 36:6 138:1 regarding 182:21 185:2 regards 148:5 regime 93:9 98:2,3 98:4,4,24	regimes 54:11 Registered 203:19 Reinstatement 4:21 reject 157:19 rejected 153:9 rejecting 168:25 rejections 157:21 relate 61:5 62:2,24 63:7,15 64:12,16 65:1,11,14,17,20 65:23 66:4,17 87:24 91:18 93:16 94:23 95:6 149:7 161:12,14 related 24:4 29:13 43:24 45:2 47:11 49:1 64:22 69:8 70:16 76:24 77:12 90:1 91:9 94:18 96:12 108:17 131:20 135:15 161:15 165:17 196:20,22 203:12 relates 63:10 64:23 64:24 67:6 100:4 124:11 138:19 relating 19:5 32:24 46:22 63:12,16 70:25 71:7 87:21 89:19 90:10,17,25 91:4,8 149:24 relation 35:20 66:2 92:24 123:4 relations 4:22 8:12 49:3 70:7,9,17,21 72:5 126:23 128:7 129:7,19 135:12 196:23 197:19,20 relationship 115:6 137:14 relatively 112:23 relevance 101:18 125:23 relevant 14:16 15:2 15:8 16:15,24 18:5 19:6 32:18 32:18 55:15 56:19	58:1 67:5,7 85:19 85:23 91:2 111:9 111:13 118:16,21 118:22 119:4,19 147:23 170:16 178:22 182:2 183:17 184:17 187:25 189:24 190:1,25 relied 84:12,24 85:15,19 129:21 190:19 reluctant 96:18 reluctantly 136:18 rely 84:1 124:16 180:9 182:10 188:12 194:11 remain 99:22 102:21 remaining 102:1,3 remains 188:24 remedies 15:25 remedy 49:10 remember 14:1 15:14 17:10 20:15 21:11,18 22:7,15 23:1,6,9,11 24:11 28:25 30:21 31:2 32:2 33:1,5 34:6 34:14 35:14 36:12 37:9,13 48:2 49:25 54:7 56:20 69:3 70:14 71:8 71:12 72:19 75:1 75:2 78:10 80:17 80:21 86:25 remote 29:5 Renaissance 2:12 renew 40:10 repeat 90:21 98:18 98:18 102:16 145:7 169:6 report 4:18 7:11,20 34:3,4,9 56:13,16 56:18,25 66:3,5 75:4,6,8 77:19 78:12,17 81:18	82:1,25 83:4,8,12 84:2,6,17,24 85:7 86:10,17,24 87:18 88:12 89:7,8 90:24 92:25 100:25 103:20 111:4,6 112:11 116:21 117:16 118:2,23 120:13 124:16 125:5,7,9 126:1,23 129:21 130:21 132:14 136:4 138:11 144:21 146:23 152:15 160:11 164:7,17 165:12 166:14,20,23 169:8 170:10,12 172:12,25 173:11 173:14 174:11 175:4 176:10,11 177:23 178:9,18 178:20 179:4,22 180:10 181:2 182:11 183:16,21 184:18 185:8 186:1,9 187:16,19 187:24 188:12 189:8 190:25 192:5 193:9,15 194:13,22 195:5 195:13 REPORTED 1:20 reporter 2:14 22:5 70:11 203:20 reports 57:4 represent 67:18 110:11 180:5 182:8 188:10 191:23 representation 47:17 48:19 representations 47:25 48:3,10,16 49:16 50:8 representative 108:1 174:16,23
---	--	--	---	--

Representative's 176:8	188:16 189:15,17 190:10	76:25 80:11 87:3 87:19 88:15 89:10	rotate 12:24 13:2	67:16 68:8 99:16
represented 49:12	resolve 18:24 28:7	93:2 105:1 107:11	roughly 14:4 31:10	105:24 114:24
representing 27:13	28:10 158:19	107:15,18 108:1	rule 81:8 115:23	118:10,10,13,19
30:2 52:22 108:6	164:2,4	108:15 111:11,25	140:6	126:6 128:25
143:5	resolving 20:14,18	112:12 115:22	rules 56:24 97:19	159:8 180:6,12
represents 43:14	20:25	116:16,19 117:2,6	Russia 159:17	187:11 191:7
110:20 186:24	respect 41:24 88:23	117:12 121:6	163:21 201:15	195:21
republic 177:13	89:1,9,22,23	123:18 124:18,23	Russian 10:5,13	Secretary 164:22
request 148:12	101:13 137:8	125:5 127:22,24	64:24	165:6,7,9,9,22,24
required 39:22	158:13 197:6	128:2 129:13	S	section 61:2 67:12
114:24 131:24	respected 21:23	130:23 132:16	S 3:1,4	129:7,9,10,13,20
149:19 182:1	respective 5:4	133:18 134:21	S.N.C 180:3	sectors 131:4,6
187:22	responding 37:8	135:7 138:16	sanctionable 97:19	security 33:25
requirement	response 37:9 39:3	140:4,5 141:24	sanitation 132:21	91:21 93:22 94:2
113:19 183:9	97:7	144:14,24 150:21	134:7	94:8,13 98:8,10
requires 41:7,15	responses 86:6	151:14,23 154:11	satisfies 123:24	98:21 99:17
139:13 152:13,21	responsibilities	155:9,13 158:10	satisfy 113:6 124:2	102:18 103:10
requisite 131:24	135:15	160:7 161:18,24	saw 115:11	147:12,13,21,24
research 8:21,22	responsibility 66:3	167:13 168:7	saying 39:20	147:25 148:6,16
9:3,7 84:15,23	66:23 108:22	169:20 170:19,24	120:20 125:25	149:20,22 150:7
91:1	110:25 123:10	171:6 172:25	139:16 149:12,13	152:6 165:1,2,4,9
researching 8:24	134:24	173:5,25 174:8	150:15 154:15	see 10:15 13:6
9:1,4	responsible 51:19	175:10,13 181:18	156:10,24,25	39:14,23 46:21
reserved 5:10	Restatement 85:5	181:24 183:16	157:1 159:20	48:9 50:20 51:12
reside 123:5	126:22 127:20	186:13,14 187:7	160:22,23 163:3	54:13 57:12 67:14
residence 37:12	128:12,19 129:6	189:20 192:22	167:14 171:14	70:5 95:19 116:24
residents 168:13	129:21 180:13	193:21,24 194:6	172:2 185:21	124:14 131:19
resolution 44:12	Restatement's	194:13 196:2	186:2	139:19 153:10
84:18,22 107:18	130:9 189:3	199:13	says 8:2 98:24	161:2 168:12
107:19,23,25	result 33:23	Rights 53:16,21	100:9,12 112:19	169:20,22,24
142:6 144:13,23	results 9:7	55:5,16,20 57:3	115:23 123:6	170:2,5
145:2 147:19	retained 80:9	59:5,8	155:22 156:19	seek 185:1
148:3,13 149:3,6	review 7:3 60:3	rise 29:9	162:5 175:17,18	seen 172:9,10,22
149:7 150:14,20	63:21,24 128:25	rising 49:2	175:25 190:4	Self-Defense 62:13
151:6 153:4,7,7	187:21	RMR 203:4	scenario 98:5 162:2	self-governance
154:9 155:1,17	revolution 201:15	road 143:8 158:13	scholarly 183:7	189:2
156:6,18 157:10	rewards 67:20	158:16 160:6,7,9	scholars 141:10	self-government
157:20 174:19	Rice 174:24	160:18 161:16	172:1,4,6 195:14	189:2
175:1 178:7	right 8:7 10:16	162:3,10 164:11	195:17	seminar 12:17
189:15 196:2,19	11:23 12:11 14:14	173:18 193:19	school 8:6,10,19,23	13:13,19,22 16:13
196:21	14:18 17:9 20:13	194:14	11:21 44:17,19	seminars 12:16,19
resolutions 93:23	30:11 33:13 34:12	role 150:1,1 163:16	Science 10:4,7	12:23
94:3,5,9,14,18	35:10 36:17 40:8	189:12	SDF 4:15	send 41:20
146:10,11 148:21	42:8 45:9 49:7,9	Roman 84:9 89:15	sea 93:5	sense 16:3 18:14
148:22,24,25	53:13,17 55:25	room 197:12	sealing 5:5	27:14 44:11 53:10
149:13 154:9	56:4 69:16 72:16	Roosevelt 201:13	second 65:18 67:10	55:17 56:10 62:20
				68:19 104:18

114:8,15,24 138:24 149:9 186:5 sent 38:19 sentence 56:18 67:16,17 68:8 191:22 sentiment 150:24 separate 19:21 108:25 128:9 separately 42:5 181:15 September 110:5 146:19 147:10 152:10 162:17 series 6:16 160:6 served 68:18 service 107:5 services 100:6 198:12 204:1 servicing 51:17 set 24:18,21,24 25:10 26:9,13,16 28:16 77:5,17 118:5 133:14,17 137:10 203:8,16 sets 39:12 Seven 73:19 shared 109:10 SHEET 204:1 Shield 199:1,11 shipping 51:14,15 51:16 52:3 shooting 79:15 short 36:2 shorter 7:22 Shorthand 2:14 shortly 196:9 showed 83:24 showing 195:12 shows 178:25 194:25 side 21:23 54:15 122:12,13 142:17 142:18 sides 44:14 85:23 sign 49:22 163:10	163:19 signatory 163:10 signed 5:13,16 59:20 163:20,22 168:5 202:18 significance 68:3 94:7 138:19 157:14 186:8 188:24 significant 113:20 147:6,16,18 175:8 190:17,18 199:22 signify 189:3 signing 159:11 163:17 similar 136:12 147:17 similarly 106:2 161:20 simply 20:3 120:17 136:23 137:10 141:9 175:7 178:16 192:6 195:2 single 19:23,24 situation 17:20 18:13 20:5 49:5 56:12 164:21 201:18 situations 112:1 Six-Day 62:12 Sixth 45:23 Slavic 10:2,6 slightly 138:20 smiling 48:7 Smith 23:19,20,21 25:5 26:22 27:12 27:19 30:3 Sniper 70:19 so-called 118:2 social 134:15 152:25 Sokolow 1:4 58:17 80:10 191:25 204:4 sole 9:17 38:13 solely 175:16	solicitor 97:7 solid 197:21,23 solution 193:20 somebody 56:10 175:24 soon 10:10 sorry 21:24 28:9 37:16 56:4 65:18 89:23 90:21 98:17 145:7 162:4 165:10 sort 9:6 44:5 93:20 116:22 140:8 sorts 29:7 sound 72:16 87:3 source 193:24 195:4 sources 84:12,21 85:1,3,9,17,20,22 86:4,7 122:2 124:17 164:6,17 164:25 165:12 166:22 169:6 173:3,13 174:10 179:2 194:22 Southern 1:1 45:18 55:7,10 78:23 182:9 186:17,18 187:1,2,3,10 191:19,24 195:20 sovereign 114:14 sovereignty 29:24 43:14 51:21 Soviet 9:9,10,13,14 10:8,10 12:9 51:20 61:10,11,16 61:19 64:23 201:13 spare 60:8 speak 10:13 17:13 20:12 83:3 166:5 speaker 36:12,12 speakers 36:10 speaking 44:14 140:23 speaks 101:4 specialized 152:12	152:19 153:1 specific 15:3,4 20:16 22:15 24:6 24:11 29:13 42:22 43:23 66:12 93:15 98:1 110:25 115:23 132:10 specifically 14:12 15:17 19:2 31:24 31:25 60:24,25 72:19 89:24 95:6 99:12 100:10 107:3 123:17 129:9 131:17 132:6,9,25 134:8 135:16 158:12 170:13 specification 155:6 specificity 66:7 specified 29:20 110:10 163:24 specifying 148:13 speech 31:16 spell 22:4 spend 86:23 sphere 134:16 spheres 109:5 spoke 18:7 20:11 20:13 35:12,14,15 81:2 spreading 91:19 squarely 120:9 ss 202:3 203:2 standard 113:22 171:21 standpoint 17:20 stare 181:17,22 start 8:25 20:6 52:8 61:2 67:17 started 6:23 10:18 10:19 12:7 13:21 14:1,7 15:6 121:23 168:24 starting 52:18 90:20 state 2:15 4:20 6:4 8:21 9:9,21 10:20	11:23 12:3 16:7,7 21:8 38:21 39:6 40:17 43:14 44:22 58:25 61:10,16 66:3,22 68:6,9 70:12,13 73:23 85:14 86:3 89:4 96:19 98:9 100:1 100:1 101:5 103:4 103:4 104:5,8,12 104:15,19 105:13 105:24 107:15 111:14,16,20 112:3,6,12,18,21 113:10,20,22 114:4,6,10,12,18 115:7,13,16,19,21 116:1,11,12,16,23 117:1,9,12,17,24 118:1,7,8,16 119:2,9,15,23 120:9,15,19,22,24 121:1,5 122:3,20 124:5,22,25 125:3 125:12,18,19,19 125:24 126:8,14 126:17 127:8,15 127:18 129:11,13 129:15 130:1,22 137:23 138:1,7,15 138:21 139:2,3,6 139:18,22 140:1 140:11,14,18,20 140:21,23 141:3,5 141:7,12,22 142:2 142:6,14,20,24 143:5,8,10,14,16 143:23 144:1,4,4 144:5,12,15,18,20 145:6,10,12,17,20 145:23 146:1,4,4 146:5,10 147:3,22 148:5,7,10,14 149:3,11 150:3,12 150:16,21,25,25 151:4,14,16,22 152:3 153:16,18
---	---	---	--	---

153:23 154:6,11 154:13,13,14,15 154:17 155:5,7,9 155:11,13,16,19 155:21,22,23 156:1,8,11,12,19 156:20,21 157:1,2 157:15,24 158:2,7 158:8,10,23 159:13,19,23 160:1,13,15,16,21 161:5,18,24 162:7 162:9,12,20 163:14 164:9,14 164:20,22,24 165:3,6,7,9,9,10 165:11,23,25 166:6,25 168:2 169:9,17,23,25 170:2,5,8,18,18 170:19 171:25 173:5,9,16,20,24 173:25 174:2,4,7 174:14,18,19 175:21,24,25 176:2,5,9,11 178:1,5,16,23 179:1,17 181:5,9 183:19 185:6 186:3 187:20 188:1 189:19 190:8,18,22 191:2 192:2,4,10,11,12 194:24 195:1,11 197:14 201:1,7,9 201:13,16,21 202:3,21 203:2,5 203:20 state's 111:17 state-employed 98:10,20 102:18 stated 143:9 172:18 172:21 statehood 32:15 62:12 66:3,22 84:4 85:11 87:14 87:22 90:14	100:20 114:4,22 114:23 117:5,6 118:3,11 123:25 124:3,10,14,18 125:2,7 127:1 129:23 131:25 138:14 143:20 152:13,21 162:14 162:23,25 163:18 164:5 170:23 171:9 172:8 180:13 182:3,16 183:8 185:3,12 189:4 190:3 191:25 200:15 statement 155:10 155:12 157:6,15 160:20 165:8 174:16,25 175:3 183:2,10 184:23 185:9 188:20 189:5 statements 59:20 197:21 states 1:1 4:17 15:22,25 16:1,2,3 16:3,4,10 17:25 18:1 25:24 26:3,6 33:12,14 44:9 45:17 46:5 49:6 51:9 54:12 55:15 55:22 57:8 69:20 71:3 72:11 94:3 112:19,20 113:16 113:16 115:8,9,10 118:6,24,25 122:16 123:2,6,9 123:11,14,21 124:4,6,7,8 125:1 125:16,20,22 127:4,5,14,16 129:7 130:20 136:10,11 138:15 138:20,25 139:5,5 139:20,24 140:6 141:3,4,8 142:9 143:9,11,12,15	144:7 146:16 150:15,22 151:4,9 151:21,25 152:1 153:9,11,15,25 157:18,24 158:3 158:13,22 159:17 159:18,21 161:1 163:4,8,9,13,15 163:21 164:8,10 164:18,23,24 165:2,18,20 166:5 166:24 167:2,7,8 167:12 168:1,4,11 168:19,24 169:9 170:21 171:1,4,5 171:20 172:4,5 173:4,8,15,15,19 174:11,13 175:10 175:12,20 176:1,4 176:12,14,17 177:10,24,25 178:5,12 179:6,6 179:23 185:5,9,15 186:4,7 188:17 189:16,19,22,25 190:1,4,6,11,17 190:20,21 191:5,7 192:1,2 194:20,20 195:1,20 196:1 197:6,20 200:22 201:2,4,5,12,17 201:19 stating 95:16 166:8 status 16:11 35:17 35:19 39:21 43:7 43:12 54:16 67:14 83:14 89:2 90:6 139:22 145:22 148:23 149:8 150:4 153:21 154:4,25 155:19 155:21,22,25 156:1,1,7,8,11,12 156:15,15,25 161:13 169:17,23 170:8,15 185:5 187:19 190:14	statuses 35:22 statute 38:21 39:11 41:10 95:21 step 13:21 26:19 steps 41:13,23 158:18 STIPULATED 5:2 5:7,11 STIPULATIONS 5:1 stood 77:1 stop 97:6 121:9 stopped 169:1 Street 2:13 3:11 204:2 strike 157:17 166:2 Strip 19:6 21:10 106:21 112:10 Structure 9:9 61:10 61:16 struggle 164:3 student 14:13 Students 31:19 studied 14:11,15 studies 9:13 44:8 77:14 78:15 study 75:24 77:17 studying 14:16 15:2 16:14,23 style 75:1 subject 16:22 19:8 77:6,24 78:5 85:12 88:19,22 89:9,12,21 149:2 195:3 submitted 7:11 74:12 82:4 87:1 146:20 subscribed 202:18 204:22 subsequent 16:16 40:2,4,10 61:24 84:20 88:3 195:1 subsequently 76:13 76:20 subset 14:10 66:12 85:22	subsidiary 162:16 substance 121:20 substantial 115:25 successful 35:16 99:18 Sue 1:21 2:14 6:2 203:4,19 sufficient 113:1,21 116:15 131:23 141:6 189:2 sufficiently 116:11 140:9 suggest 36:24 78:1 suggesting 57:9 suggests 148:3 suicide 93:11 suit 52:22 Suite 3:11 204:2 summer 7:16 60:21 supplemented 18:13,16 support 85:17 96:5 96:10,15,18,22,25 97:1,3,8,11,22,22 112:15 120:6 122:2 164:7,17 166:23 169:8 173:3 189:1 195:10 supported 179:3,9 suppose 62:20 70:15 75:24 86:22 96:24 98:7 99:17 99:20,21 139:23 163:12 supposed 110:10 175:14,16 176:22 177:18 supposedly 200:12 Supreme 19:7 43:8 46:5 50:4 96:20 96:21,24 97:14 177:8,12,13,20 sure 16:5 23:9 33:4 51:1 58:14 73:21 86:9 89:11 102:3 113:17 115:15
--	--	--	--	--

118:14,19 144:17 169:3 186:21 187:6 188:21 surprise 180:14,15 180:17 surrounded 95:14 survey 11:7 sworn 5:13 6:2 203:8 204:22 Syria 122:24 system 10:8 12:9 18:18 70:11 127:3 133:18 181:18 systems 198:14	189:13 talked 18:4 22:21 43:2 51:7 57:16 66:19 96:11 144:22 189:14 193:18 talking 20:3 22:24 38:23 43:15 44:16 58:12 102:14,17 104:16 119:5 126:16 137:22 186:16 198:17 talks 159:2 189:12 Tanzania 10:16,23 10:24 11:12,14,15 11:23 12:4 13:24 target 77:10 targeting 93:11 tariffs 165:17 task 195:9 taught 12:17,20,22 12:25 13:7,9 tax 133:6 teach 12:16 Teacher 143:7 teachers 20:4 teaching 9:24 10:5 10:7,9,11,25 11:2 11:6,11 12:3,8,14 12:17 13:18,22 14:1,7 15:6 16:13 16:17,18,22 technically 54:19 tell 12:24 98:2 142:1 154:10 170:22 173:15 183:4 184:22 tells 139:25 temporary 10:25 tension 159:6 term 15:20 104:4,6 104:9,10,11,13,17 138:17,18 145:13 148:11 156:22 165:5 terminate 101:6,7 terminated 100:13	terms 19:2 29:18 78:11 90:5 109:14 124:13 140:6 146:8 154:3 157:12 200:13 territorial 79:16,17 79:18,22 93:5 131:7 territories 19:17 21:4,16 22:2 42:9 105:13 122:21 123:1,6 132:10 200:7 territory 21:1,6 35:18 43:13,15,18 67:19 68:7,8 99:14 107:2 110:19 114:15 115:1 124:12 127:12,24 129:16 130:15,16,18 131:10,12,16,21 132:2 140:8 198:7 200:11 terror 97:6 terrorism 91:10,14 91:15 92:3,4,5,9 92:10,13,16,19,19 92:21 93:1,7,16 93:23,24 94:19,23 94:25 95:6,8 96:2 96:5,12,22 97:8 97:10,11,14 terrorist 95:17 97:6 97:10,22 test 118:4 testified 6:4 70:8 73:11,12 74:4,7 75:6,7 198:11 200:21 testify 52:16 80:1 testifying 68:19 79:21 testimony 73:15,17 73:25 74:9,13 86:15,16,19 121:20,24 198:15	202:7,10 203:10 Testing 17:8 text 129:13 161:16 Thank 170:1 theory 136:9 thing 14:20 44:13 103:3,3 165:14 things 44:5 51:6 64:22 144:5 154:1 160:24 162:25 175:13 198:18 think 14:20 22:23 24:1,11 25:1,20 25:23 26:2,7,11 27:5 30:24 31:7 31:20,23 32:3 33:2 34:10 36:14 37:25 41:25 42:1 42:12 43:23 45:4 45:7 46:15,17 48:17 51:12 52:6 52:18 53:5,7 54:9 55:4 57:15,22 59:24 61:13 63:14 64:10 65:16 66:16 66:24 69:11 71:21 72:14 73:5,19 77:25 78:3,19 85:2,17,19,20 87:6 88:10 94:1 95:25 97:18,21 98:15 100:8,17,21 103:1,2 109:16 114:8,13,23 130:7 130:11 132:19,22 134:6,7,12 141:5 143:17 144:6,8 147:4 152:17 161:3 163:3,21 165:13 168:3 169:10,13 170:11 171:11 174:15,21 176:21 177:3 178:25 179:24 180:16 181:25 182:17 183:15,17 183:20 184:7,10	184:11,17,19 185:13,18,25 187:13 189:7,18 190:7,9,13,23 191:1 192:6 193:5 193:8,16 197:16 197:23,25 198:1 200:21 201:20 thinking 198:24 thinks 57:10 96:25 third 2:13 4:21 117:8 128:12 129:6 thought 22:14 33:9 33:17 36:15,16 39:7,20 49:20 92:24 124:13 153:19 154:2 159:25 178:21 182:2 187:25 three 10:2 12:10 30:18,20 50:6 71:22,23,23 116:22 117:15,16 123:14 127:20 Thursday 1:15 time 5:10 6:19 12:15,16 15:9 23:2 24:10 32:19 32:25 34:14 41:20 42:13 49:10 67:21 71:7,21 72:4 76:15 86:23 87:6 113:15 114:11 116:18 117:2 119:13 120:10 127:7 138:2 142:21 145:5 155:1 191:12 198:18,21,24 200:7 201:15,18 201:25 timeframe 135:4 198:13 times 12:25 17:3,9 17:10,11 19:12 22:15 23:5 28:23
--	---	--	---	--

30:13,16,18,20 49:21 82:7,9 104:11 TIMOTHY 3:10 title 13:13 14:24 titled 61:11,12 top 109:24 topic 38:12 50:23 200:20 topics 12:16 49:24 total 49:18 50:8 68:17 153:10 180:22 200:18 totality 45:4 172:10 185:11 191:17 totoole@milchev... 3:13 touch 49:7 touched 94:14 touches 185:22 tourism 134:15 town 24:23 199:23 Trade 9:10 61:11 61:19 transcript 202:7,9 transformed 42:22 TRANSPERFECT 204:1 treaties 14:17 15:3 15:4,25 treatment 88:3 91:20,22 115:11 treaty 95:21 119:14 122:4,7,11,17,19 139:25 167:2,3,10 167:13,16,19 trial 5:10 70:7 77:1 86:20 trials 134:4 tribunal 51:10 53:11 tribunals 53:2 55:1 tried 64:15,25 85:22 true 42:14 47:13 67:24 99:2 119:21 139:12 142:8	187:8 202:9,12 203:9 try 164:1 trying 66:9 120:23 Turkey 122:9,13 123:7 Turkish 122:22 123:3,10 turn 67:9 125:4 turned 39:6 51:18 turning 8:6 57:19 66:25 200:20 twice 13:9,10 two 8:23 9:8 12:6 12:19 13:8 19:21 22:6 30:18,20 31:1,7 48:6,10 50:5 53:8 62:11 69:18 74:6 82:24 85:4 114:5,19,20 130:7 136:3 163:4 two-state 193:20 type 41:24 46:17 77:24 78:4 98:4,5 165:10 193:6 types 47:6 135:10 135:10 172:1 typically 77:5 <hr/> U U 6:1 U.S 34:22,23 35:7 45:5 46:18 47:10 47:14 49:18 50:4 50:16,19 51:8 54:8,10 68:25 69:1,4,19 70:1 76:21 91:3,7 94:22 95:5 96:11 96:20,21 98:14 101:9 118:10 119:19 120:11,12 120:14,24 126:7 126:12 153:3,5,5 153:7 174:16,23 175:17 176:7,22 177:3,8,11,12,14	177:20,20 179:8 181:7,10,16,16 183:22 185:2 186:1 190:16 191:13 192:10,11 uh-huh 13:23 22:13 30:15 34:13 34:23,23 38:2 40:6 42:19 48:1 48:13 53:14 57:18 62:7 64:2 67:15 69:10,22 70:2 71:11 72:8,8 76:10,10 78:7,10 79:5 88:11 96:13 115:20,20 117:13 117:22 127:21,25 132:17,17 134:20 152:7 158:11,11 160:10 161:8 175:2 176:24 180:8 ultimately 98:1,11 98:22 108:12 136:15,18 145:11 145:16 171:5 UN 33:7,10,11 84:22 91:21 116:19 144:14 145:17 146:1,6,14 146:21 149:8,10 149:14,21 150:6 152:9,25 153:15 156:2,12 159:14 166:17 170:14 175:1 188:16 189:17 190:10 UN's 188:22 unarmed 93:12 98:12,23 99:19 101:15 102:19 uncertain 97:1 uncertainty 94:6 underpinnings 85:13 understand 6:18 63:9 66:9 181:11	181:16 understanding 18:12,15,17 80:7 92:1 109:12,21 undertake 126:13 UNESCO 152:18 Ungar 188:3 190:24 191:12,14 194:5 Ungar's 188:16 uniform 115:22 Union 9:14 10:8 50:5 51:20 64:23 201:13 United 1:1 4:17 15:12,12 17:25 18:1 25:24 26:3,6 32:15,17,22 39:8 44:9 45:17 46:5 49:6 51:9 55:22 69:20 71:2 72:11 88:4 94:3 107:17 113:14,18,24 122:16 124:8 127:5 129:7 136:10,11 139:5,7 142:8,10 143:9,11 143:12,15 145:5 145:22 148:5,23 152:11,12 153:1 154:5,24 157:13 158:13,22 159:17 163:7,9,13,15,20 164:7,10,18,22,23 165:2,18,20 166:5 166:24 167:1,7,8 167:12 168:1,4,10 168:19,24 169:9 169:17 173:4,8,15 173:15,19 174:10 174:13 175:10,12 175:20 176:1,4,12 176:17 177:10,24 177:25 178:5,12 179:23 185:5,9,15 186:3,6 188:17 189:1,12,19,22,23	190:3,6,11,17,20 190:21 191:5,7 192:1,2 194:20,20 194:25 195:20 196:1 200:21 201:2,3,5,12,19 universities 19:15 19:18,19 20:4,9 21:25 59:1,12 university 8:12,21 9:21 20:7 21:12 21:24,25 22:3 30:23,24 31:13,19 31:22 37:22 58:25 63:24 66:19 unlawful 92:14 unrecognized 201:9 urgency 44:12 USDC 4:15 use 7:20 15:20 60:23 62:17,20 104:3,17 112:15 125:21 127:14 131:19 138:17 148:11 165:5 uses 128:12 usual 97:19 utilize 118:25 <hr/> V v 180:3 182:4 vague 23:3 130:13 188:8 valid 46:16 validity 39:5 variety 87:23 91:17 142:25 various 23:25 24:2 29:1 35:22 94:25 107:10 111:21 198:12 199:15 varying 92:18 Vatican 169:19 version 7:14,25 versus 70:16 71:2 72:11,22 188:3
---	--	--	---	---

vessels 51:17	vitae 4:8 7:9 8:20	167:12,14 182:24	16:15 18:2 23:15	wouldn't 43:5
vicinity 71:15	65:5,7	187:15,21	25:2 27:10 32:3	92:10 97:18
Vienna 49:2 50:3	vote 51:24 142:7	waters 79:16,17,18	37:20 64:21 65:3	117:25 125:14
70:6,8,17,21	145:2,11 146:10	79:22	70:18 95:25 148:3	140:12 148:11
71:17 72:4	146:11,16 151:7	way 15:18 16:21	162:2	151:24 160:14
view 36:4,5,18,22	153:3,7 154:5	44:5,7 49:20	weren't 30:5 50:13	192:18
37:6 41:12 43:3,5	158:1,1,4,4,5	65:12 95:22	52:15 69:19 138:4	wrap 196:9
43:6,8,9 141:4	174:17	101:24 103:19	193:13,13	write 49:25 64:5
142:13,21 149:4	voted 139:6 142:9	104:1,14,18	West 19:6 21:7	67:21 81:13,14,18
154:2,6 162:19	144:24 147:14,14	108:18,23 109:3,8	34:20,21 42:4,10	87:18
164:23 174:20	150:19,21,23	112:7 115:21,22	43:6,16 68:11	writers 186:11
175:23 186:6	151:5,21 152:2,2	124:15,24 136:7	76:19 77:9 106:3	writing 75:9 86:17
187:18 188:16	153:5,15,22	138:20 139:19	137:4 198:7	86:23 90:16,23
195:5 201:5	156:24 157:18	141:21 142:12	199:16,23 200:1	166:13 178:9
views 36:11,14	196:1	144:8 146:10,12	Westlaw 181:6	180:10 182:11
42:21 43:22 44:3	votes 149:3 156:18	147:1,4 149:3,5	WHEREOF	185:8 188:12
147:17 149:1	voting 150:14	149:25 150:8	203:15	193:14
189:15 190:16,18	153:12 154:1,8,22	151:10 154:20,22	withhold 144:6	written 14:18 49:23
violated 16:1	155:8 157:19	157:16 158:6	withholding 144:7	50:4 61:4,8 63:12
violation 57:10,14	vs 1:6 4:16 204:4	166:11 167:9	witness 4:2 6:1	63:15 64:23 68:20
99:5		168:17 170:22	51:13,16 53:6	74:1 79:7 80:3
violence 77:9 91:18	W	171:8 175:6	68:15,18 69:5	87:19,23 88:19
94:25 98:11,22	waived 5:6	190:24,24 197:19	70:8,20 71:18	89:17 90:9 171:20
99:19 102:19	want 6:16 7:24	203:13	74:22 79:12 81:11	179:19,21 184:10
103:6 161:15	26:19 27:8 31:11	ways 20:14,17,20	163:11,16 199:8	195:13
164:2	41:20 43:1 47:24	28:7,10 42:22	203:7,10,15 204:5	wrong 187:17
violent 101:14	50:9,18 97:25	104:10,11 111:21	witnesses 69:25	wrote 14:20 64:3
Virginia 70:14,15	98:1 117:14 121:9	114:6 124:6	163:23	66:11 67:1,8 84:3
72:3 73:23 74:6,6	121:12 125:6	132:16,18 134:8	wondering 18:25	127:6,9
virtually 124:7	136:17 143:18	134:18 142:1	word 130:3 155:22	
visit 17:5,18,22	179:15 183:3	143:24 144:10	words 22:6 124:9	X
18:11 19:14,23,24	184:22 186:21	158:4	144:17 159:1	x 1:2,9 195:14
20:2 21:15 22:1	190:4	we'll 6:23 87:7	work 29:10 62:18	Y
22:11,17 23:6,17	wanted 29:10 76:21	we're 137:22	62:18 68:2 81:8	Y 6:1 195:14
27:10 28:16,20	146:14	159:20 160:24,25	81:17 86:21 98:8	yeah 19:23 24:9
30:12,21,23,25	wants 117:24	163:15	worked 28:19,22	32:2,3,14 40:12
34:11 37:21 43:4	war 15:9 62:12	we've 42:16,17	48:4 80:24 200:19	41:19,19 49:1,1
visited 17:1,3 19:11	71:8 72:7 105:16	45:3 51:7 58:20	working 25:8	50:25 51:12 57:22
19:18,19 22:14	105:20,24 119:16	59:12 126:5	world 15:9 16:4,7	63:2 69:1 70:13
23:5 29:4 30:13	122:8 149:24	141:21 144:22	17:25 18:19,21	78:10 85:2 96:17
30:17 42:4	warfare 56:24 99:5	164:13,16 169:5,7	24:1,8,13 25:22	115:23 120:8,12
visiting 19:15	99:6,8	169:10 186:14	25:23 105:16,20	126:9 129:4 132:8
visits 17:16 19:13	Washington 3:12	weeks 143:11 159:9	105:24 108:8	136:14 155:16
19:21 20:7 22:15	80:16	160:25	119:16 122:8	164:5 168:21,23
27:13 28:4 42:2,5	wasn't 54:19	weight 183:6	130:12 135:13	199:21 200:3
42:7,17,23 90:18	120:23 121:3,4	welfare 134:15	159:18,21 201:17	year 8:22 10:16
90:19	155:8 160:1,2	went 11:22 12:3	world's 140:7,8	

11:23 13:1,3,3,4 34:15 58:13,14 61:23 68:4,5 71:13,25 72:9,10 72:12 75:2 80:20 96:20 years 8:23 13:6,8,9 13:11 14:4 17:10 43:9,25 47:18 65:9 71:12 95:12 119:10 173:21 Yesterday 82:13 York 1:1 3:5,5 74:19 167:23 182:9 186:17,18 187:2,3,10 191:24 204:2,2 York's 187:4 191:19 Yugoslavia 52:23	197:8,15,23 14 203:22 15 50:8 160 151:9,21,24 19 87:2 190 151:11 196:14 196:15 1920s 117:1,24 119:8 122:3 167:1 1923 119:14 167:10 167:15 168:7,9 1925 120:7 178:11 179:9 1932 164:22 165:1 165:16 166:4,7 1933 127:3 201:14 1943 68:4 1948 67:19 168:13 168:22 1949 113:15 1953 178:11 1966 8:7,13 1967 106:5 168:23 168:24 1969 61:17 1970s 48:20 50:12 50:15 90:20 1973 45:15 61:20 1974 188:22 1976 45:21 1977 17:7,17 198 4:4 1980s 17:9 19:12 1983 12:1,2 13:25 14:2,3 1986 46:1 1989 14:22 1990 188:11 1990s 17:11 23:7 52:23 75:3 1993 29:21 30:7,10 30:11 134:13 161:20 1994 106:22 131:2 131:4,14 1995 110:3,5 131:15	1997 46:9 64:6 67:1 1999 23:14,15 25:1 25:13 26:21 28:20 30:12 <hr/> 2 2 4:10 59:25 60:2 62:22 65:17 69:23 82:3 85:5 196:5 20 47:17 49:24 204:23 200 62:11,16 2000 51:23 61:23 71:14 72:10 132:24 134:10 135:4 198:8,8,17 199:17 2000-2002 71:19 20005-5701 3:12 2000s 30:17 2001 71:14 2002 57:13 71:14 2002-2004 106:6 2003 72:1 142:16 143:8 158:13,16 159:4,16,16,20,21 160:4,23 161:16 162:3,17 193:18 193:24 194:14,23 194:25 2004 51:25 52:1 132:24 134:10 135:4 182:10 194:1 198:8,18 199:17 2005 62:6 188:11 194:5 2006 51:25 2008 191:19,25 194:8 2009 31:10 33:2,4 34:10 39:1 201 4:20 129:7,13 2010 33:4 34:10 72:16,17 2011 33:22,23 34:2 34:16 146:19	147:10 148:7,16 152:5,10,20,22 2012 31:10 37:24 38:1 84:19,22 107:19 142:6 144:22 147:18 153:6 175:1 176:8 189:14 195:25 196:2,19 2013 1:15 2:6 80:22 80:23 81:3 82:9 202:9,19 203:17 204:5 2015 203:22 202 3:12 20th 177:11 212 3:5 204:3 216 204:2 21st 30:19 24th 203:16 25 50:11 26 81:8 29 84:19 142:6 297 67:10 <hr/> 3 3 4:12 63:18,20 67:1 3-minute 196:5 3:18 201:25 30 35:2 47:17 50:11 140:21 399 3:4 <hr/> 4 4 4:15 72:1 79:1,3 88:10 40 35:2 400-8845 204:3 41 153:13 45th 204:2 <hr/> 5 5 4:18 81:20,22 88:13 103:21 50 2:12 153:15 157:18	59 4:11 <hr/> 6 6 4:3,20 84:8 128:22,24 60 196:17 626-5800 3:12 63 4:14 655 3:11 69/17 107:18 <hr/> 7 7 4:9 70s 42:16 715-1399 3:5 79 4:17 <hr/> 8 8:30 2:7 80s 22:12,16,18 95:8 81 4:19 <hr/> 9
---	---	--	---	---